A

DIGEST OF INDIAN LAW CASES

CONTAINING

HIGH COURT REPORTS

AND

PRIVY COUNCIL REPORTS OF APPEALS FROM INDIA, 1912,

WITH AN INDEX OF CASES,

BEING A SUPPLEMENT TO THE CONSOLIDATED DIGEST OF INDIAN LAW CASES, 1836—1909.

COMPILED UNDER THE ORDERS OF THE GOVERNMENT OF INDIA

BY

B. D. BOSE

OF THE INNER TEMPLE, BARRISTER-AT-LAW; ADVOCATE OF THE HIGH COURT, CALCUTTA, AND EDITOR OF THE INDIAN LAW REPORTS, CALCUTTA SERIES.

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PREFACE.

THIS volume is published as a supplement to the new Consolidated Digest, 1836—1909. It contains the cases reported in the four series of the Indian Law Reports, the Law Reports Indian Appeals, and the Calcutta Weekly Notes, for the year 1912.

The different sets of Law Reports in which the same cases have been published, are specifically noted in the Table of Cases.

For easy reference, a number of words and phrases, which are expounded in the judgments digested in this volume, are given in a separate list, in alphabetical order, under the heading "Words and Phrases."

B. D. BOSE.

HIGH COURT, CALCUTTA,
The 18th November, 1913.

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HIGH COURT, CALCUTTA, 1912.

CHIEF JUSTICE:

The Hon'ble SIR LAWRENCE HUGH JENKINS, KT., K.C.I.E.

PUISNE JUDGES:

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" " N. R. CHATTERJEA.
" " W. TEUNON (*Additional Judge*).
" " A CHAUDHURI (*Additional Judge*).
" " S. HASSAN IMAM (*Additional Judge*).
" " T. W. RICHARDSON (*Additional Judge*).
" " C. P. BEACHCROFT (*Offg*).
" " E. P. CHAPMAN (*Offg.*).

ADVOCATE-GENERAL:

The Hon'ble MR. G. H. B. KENRICK, K C.

STANDING COUNSEL:

The Hon'ble MR. B. C. MITTER.

HIGH COURT, BOMBAY, 1912.

CHIEF JUSTICE:

The Hon'ble SIR BASIL SCOTT, KT.
" " " NARAYANRAO CHANDAVARKAR, KT. (*Acting*).

PUISNE JUDGES:

The Hon'ble L. P. RUSSELL (*Retired*)
" " SIR NARAYANRAO CHANDAVARKAR, KT.
" " S. L. BATCHELOR
" " SIR DINSHA D. DAVAR, KT.
" " F. C. O. BEAMAN.
" " J. J. HEATON.
" " N. C. MACLEOD.
" " G. S. RAO (*Additional*).

HIGH COURT, BOMBAY, 1912—*concld.*

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HIGH COURT, MADRAS, 1912.

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HIGH COURT, ALLAHABAD, 1912.

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ANNUAL DIGEST

OF

THE HIGH COURT REPORTS,

AND OF

THE PRIVY COUNCIL REPORTS OF APPEALS FROM INDIA

1912.

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1. ——— *Accomplice, Testimony of—Corroboration.* Under s. 133 of the Evidence Act, a conviction is not illegal merely because it proceeds on the uncorroborated testimony of an accomplice. To justify the High Court in setting aside the conviction it is necessary to show not only that there is no corroboration, but that the Judge, taking all the evidence together, was wrong in acting on it. Where, immediately after a dacoity and before the arrival of the police, one of the accused who had been caught made a confession to a private person, naming the other persons concerned in it except two, one of whom he named two days after in his confession to the Magistrate, which agreed with the evidence subsequently given by the informer, both the confessions being afterwards retracted, and another accused made a confession naming all the persons mentioned by

ACCOMPLICE—*concld.*

the approvers, the two accused and the latter having been arrested at different times and places, and there was evidence that some of the dacoits were seen in company together shortly before the dacoity and that they were absent from their homes shortly after it: *Held*, that the confessions of the two accused and the other facts were sufficient corroboration of an approver, who had been believed by the Judge and assessor, as against the co-accused who had not made confessions. LALAN MALLIK *v.* KING-EMPEROR (1911) . . . . **16 C. W. N. 669**

2. ——— *Testimony of Accomplice, Spy or Informer—Corroboration. Per* HARINGTON, *J.*—The testimony of persons who have been members of a criminal conspiracy or else have joined it for the purpose of betraying its secrets must be very carefully scrutinised and much weight cannot be attached to it unless it is corroborated by other circumstances. *Per* MOOKERJEE, *J.*—Where a witness has made himself an agent for the prosecution before associating with the wrong-doers or before the actual perpetration of the offence, he is not an accomplice, but he may be, if he extends no aid to the prosecution until after the offence is committed. A mere detective or decoy is not therefore an accomplice nor an original confederate who betrays before the crime was committed. Yet an accessory after the fact would be an accomplice, if he had, before betrayal, rendered himself liable as such As the crime of conspiracy is complete the moment there is concerted intention members of the conspiracy who after such agreement have out of fear or repentance transformed themselves into spies and informers do not thereby cease to be accomplices, and their evidence requires corroboration of the same extent and character as in the case of accomplices. PULIN BEHARI DAS *v.* KING-EMPEROR (1911) . **16 C. W. N. 1105**

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——— *Unstamped acknowledgment, whether acknowledgment of debt—Stamp Act (II of 1899), Sch. I, Art 1—Evidence—Limitation Act (IX of 1908), s 19—Stamp-duty.* In an account between the parties headed "Account current," kept by the plaintiff, the defendant was debited with advances made by the plaintiff, together with interest on sums due from time to time, and credited with payments made by the defendant, the balances being carried forward half-yearly On the account being adjusted and stated, a certain sum E. & O. E. was shown due by the defendant: the plaintiff appended the words "I accept this correct," and the defendant subscribed his signature thereto. The account was continued, the said sum being carried forward, and further sums were debited to the defendant, but there were no further items of credit: *Held.* that, in the circumstances of the case, the instrument was not an acknowledgment of debt within the meaning of Art. 1 of Sch. I of the Stamp Act, and was admissible in evidence without being stamped. *Brojender Coomar* v. *Bromomoye Chowdhrani, I. L. R. 4 Calc. 885, Brojo Gobind Shaha* v. *Goluck Chunder Shaha, I. L R. 9 Calc. 127,* and *Nund Kumar Shaha* v. *Shurnomoyi, I. L. R. 15 Calc 162,* followed. GALSTAUN *v* HUTCHISON (1912) . . . . **I. L. R. 39 Calc. 789**

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——— *Acts done by Government in exercise of its sovereign rights—Status of non-feudatory zamindars in Central Provinces—Withdrawal from non-feudatory zamindars, the Police, Excise, and Cattle-pounds administration—Withdrawal of other rights in wajib-ul-arz or administration paper—Police Act (V of 1861)—Excise Act (X of 1871)—Cattle Trespass Acts (III of 1857 and I of 1871)—Central Provinces Land Revenue Act (XVIII of 1881).* The plaintiffs in these appeals were members of a group of non-feudatory zamindars in the Central Provinces whose status was in 1864 determined by the Government to be that of ordinary British subjects. When they first came by conquest or cession under British rule, the management of their estates and the judicial and administrative powers exercised by them were left in their hands as a matter of convenience or economy of administration, and in no case were they recognised as entitled to independent powers or as possessing any sovereign rights. In 1874, sanads giving them proprietary rights in the soil were

ACT OF STATE—*concld*

granted, but subsequently at various times the Government withdrew from them the Police and Excise administration, and also the rights they had exercised in respect of cattle pounds; and in 1903 they were required by the settlement officials to execute (which they did under protest) *wajib-ul-arzes* containing provisions restricting their rights in various ways which they considered prejudicial to their interests and prestige. In suits brought by them against the Secretary of State in which they complained that they had been illegally deprived of rights to which they had been indefeasibly entitled from time immemorial, and that the contents of the *wajib-ul-arzes* were in derogation of their undoubted privileges: *Held*, that in the exercise of the Police and Excise functions, the plaintiffs were acting not as of right, but either by sufferance or by delegation, and that the resumption of those functions by the Government was an act done by the Government in the exercise of its sovereign powers, and consequently the suits were not maintainable in the Civil Courts. The maintenance of private cattle-pounds was incompatible with the provisions of the Cattle Trespass Act and their establishment under the superintendence and control of Government, as being under the circumstances essential for the maintenance of law and order and the peace and good government of the country, was an act of the executive Government with which it was not competent for the Civil Court to interfere BIR BIKRAM DEO *v.* SECRETARY OF STATE FOR INDIA (1912).
I. L. R. 39 Calc. 615

ACTIO PERSONALIS MORITUR CUM PERSONA.

See MAHOMEDAN LAW—PRE-EMPTION
I. L. R. 36 Bom. 144

ACTION.

——— **survival of—**

See MAHOMEDAN LAW—PRE-EMPTION.
I. L. R. 36 Bom. 144

ADMINISTRATION BOND.

——— *Letters of administration—Probate and Administration Act, 1881, ss. 78, 79, 86—Administration bond in favour of District Judge—Assignment of the bond by the District Judge—Second assignment—Appeal—Memorandum of appeal treated as petition for revision.* Under s. 79 of the Probate and Administration Act, 1881, a District Judge has no authority to assign an administration bond again to a person so long as a previous assignment of the said bond to another person is in force. No appeal lies against an order passed by the District Judge assigning a bond under s. 79 of the Act; but where the District Judge passes an order which he has no authority to do, the High Court may interfere, treating the memorandum of appeal as an application for revision. *Uma Charan Das* v. *Muktakeshi Dasi, I. L. R. 28 Calc. 149*, discussed. KALIMUDDIN *v.* MEHARUI (1912) . . . . **I. L. R. 39 Calc. 563**

ADMINISTRATOR PENDENTE LITE.

——— *Discharge, order of—Passing of accounts—Suit for account, whether subsequently maintainable—Civil Procedure Code (Act V of 1908), O. XIV, r. 6* An order discharging an administrator *pendente lite* from further acting as such upon passing his accounts, and the consequent passing of his accounts, in the circumstances of the case, did not constitute a bar to a suit for an account brought against him. KHITISH CHANDRA ACHARJYA CHOWDHURY *v.* OSMOND BEEBY (1912)
I. L. R. 39 Calc. 587

ADMISSION.

See TRANSFER OF PROPERTY ACT, S. 107.
I. L. R. 36 Bom. 500

——— A plaintiff may rely on the admissions of defendant as to his title in proof of his claim just as much as on any other evidence, and if a defendant goes into the witness box and admits his title there is no further onus upon him to prove it, at least as against such defendant. An erroneous statement made without knowledge in an affidavit filed as a matter of routine by a person whose authority to make it was not proved, could not bind a party to a proceeding, nor affect the character of a sale held in such proceeding under the provisions of s. 124 (Beng. Act I of 1879), so as to confer upon the auction-purchaser a right which he could not obtain by the sale itself. *Janardan Singh* v. *Maharajah Pertap Udai Nath Sahi Deo, R A No. 6 of 1880, Per* CUNNINGHAM AND PRINSEP, *JJ.*, 24TH NOV. 1881, referred to. KALI SANKAR SAHAI *v.* UDAI NATH SAHI DEO (1911) . **16 C. W. N. 683**

ADOPTION.

See AGRA TENANCY ACT (ACT II OF 1901), S. 22 . . **I. L. R. 34 All. 658**

See CUSTOM . **I. L. R. 39 Calc. 481**

See ESTOPPEL . **I. L. R. 34 All. 398**

See HINDU LAW—ADOPTION.
I. L. R. 39 Calc. 582

See HINDU LAW—ADOPTION.
I. L. R. 36 Bom. 533

——— *Suit for declaration of invalidity of an adoption—Suit dismissed as time-barred—Plaintiff debarred from obtaining a decree for possession on title.* When the setting aside of an adoption is essential to the granting of a decree for possession of immoveable property, the fact that a suit to set aside the adoption has become time-barred is a bar to the granting of a decree for possession on title. *Lachman Lal Chowdhri* v. *Kanhaya Lal Mowar, I. L. R. 22 Calc. 609*, referred to. *Nathu Singh* v. *Gulab Singh, I. L. R. 17 All 167*, and *Chandama* v. *Salig Ram, I. L. R. 26 All. 40*, distinguished. CHUNNI LAL *v.* SITA RAM (1911) . . . **I. L. R. 34 All. 8**

ADULTERATION.

——— *Adulterated Ghee, sale of—Master and servant—Sale by servant or partner—Liability therefor of master or co-partner of a firm*

ADULTERATION—*concld.*

of Commission Agents—Calcutta Municipal Act (Beng. III of 1899), ss. 494 and 574. Section 495 of the Calcutta Municipal Act imposes a positive prohibition against the sale of adulterated articles of food or drink, and covers the case of an agent or firm as well as that of a master and servant. A master is liable under the section for the sale by his servant of such as adulterated articles at his shop without his connivance. The partners of a firm carrying on business as agents of the manufacturers of *ghee*, in shops bearing their names, are each responsible for everything sold therein in contravention of the section. *Brown* v. *Foot, 17 Cox C. C. 509*, followed. SEW KARAN *v.* CORPORATION OF CALCUTTA (1912) **I. L. R. 39. Calc. 682**

ADVERSE POSSESSION.

See IDOL . . **I. L. R. 36 Bom. 135**
See LIMITATION . **I. L. R. 39 Calc. 453**
See MORTGAGE . **I. L. R. 34 All. 289**
See MORTGAGE . **I. L. R. 34 All. 640**
See SHEBAIT . **I. L. R. 39 Calc. 887**

1. ——— *Adverse possession, what title affected by—Possession affects only title of persons entitled to possession—Adverse possession against mortgagor does not affect rights under a simple mortgage executed before adverse possession began.* Possession adverse to the mortgagor is not adverse to and does not affect the right of a simple mortgagee not entitled to possession when the adverse possession commenced, when such mortgage was granted prior to the commencement of such possession. *Amadar Mandal* v. *Makhan Lal Day, I. L. R. 33 Calc. 1015*, followed. The interest in immoveable property which is acquired by adverse possession can only be that interest which the person entitled to immediate possession had at the time that adverse possession began. It will attach against the whole of the interest of the person so entitled to possession notwithstanding that he has subsequent to the commencement of the adverse possession alienated the whole or any part of such interest provided possession continued uninterrupted PARTHASARATHY NAICKEN *v.* LAKSHMANA NAICKER (1911).
I. L. R. 35 Mad. 231

2. ——— *Quære*:—Whether adverse possession against the mortgage for the statutory period operates to extinguish the rights of the mortgagee under a previously executed mortgage. NANDA KUMAR DEY *v.* AJODHYA SAHU (1911) . . . **16 C. W. N. 351**

3. ——— *Co-sharers—Possession by one tenant in common when adverse to others—Non-participation for a long time, effect of.* In order to establish adverse possession by one tenant in common against his co-tenants, there must be exclusion or ouster and the possession subsequent to that must be for the statutory period. Mere non-participation of rents and profits would not necessarily of itself amount to exclusion, but such non-participation or non-

ADVERSE POSSESSION—*concld*

possession may in the circumstances of a particular case amount to an adverse possession. What the circumstances may be which may have to be considered in determining the question of ouster, discussed. AYENENUSSA BIBI *v.* SHEIKH ISUF (1912). . . . . **16 C. W. N. 849**

ADVOCATE.

——— Advocate as witness—*Professional ethics—Counsel retained by party if may be exempted as witness.* It is a rule of professional ethics of almost universal application that having taken up the position of an advocate, a counsel should refrain from testifying on a trial which is being conducted by him. PEARY MOHAN DAS *v* WESTON (1911)
16 C. W. N. 145

ADVOCATE-GENERAL.

See CIVIL PROCEDURE CODE, 1908, s. 92.
I. L. R. 36 Bom. 168

AGENT OR MANAGER.

——— acts of—
See RIOTING . **I. L. R. 39 Calc. 834**

AGRA TENANCY ACT (II of 1901).

——— **ss. 4, 95, 167, 197.**
See JURISDICTION **I. L. R. 34 All. 358**

——— **s. 9.**

——— *Fixed-rate tenancy—Entry of name of tenant in revenue records—"Conclusive proof."* The entry mentioned in s. 9 of the Agra Tenancy Act, 1901, is "conclusive proof" only as to the nature of the tenancy as between the zamindar and the tenant and does not apply to questions as to the title to the tenancy as between rival claimants thereto. *Mulai Singh* v. *Rajwant Singh, All. Weekly Notes, 1906, p. 58*, overruled. JAINATH PATHAK *v.* KALKA UPADHYA (1912).
I. L. R. 34 All. 285

——— **s. 22.**

1. ——— "*Lineal descendant*"—*Adopted son Held*, that an adopted son is a lineal descendant within the meaning of s. 22 of the Agra Tenancy Act, 1901. LALA *v.* NAHAR SINGH (1912) . . **I. L. R. 34 All. 658**

2. ——— *Succession—Special rule of succession exclusive of personal law of parties. Held*, that the rule of succession which is laid down by s. 22 of the Agra Tenancy Act, 1901, is independent and exclusive of the personal law of the parties to whom the section applies. Consequently the grandsons of a deceased occupancy tenant, as his male lineal descendants, would be entitled to share in the tenancy jointly with the sons of the late tenant. *Bhura* v. *Shahab-ud-din, I. L. R. 30 All. 128*, followed. ALI BAKHSH *v.* BARKATULLAH (1912).
I. L. R. 34 All. 419

AGRA TENANCY ACT (II OF 1901)— *concld.*

——— ss. 166, 201.

——— *Lessee continuing to be recorded as such after expiry of lease—Suit for profits—Presumption.* The lessee of a mortgage of zamindari property was recorded as entitled to the profits of the share, and remained so recorded even after the mortgage had been redeemed. *Held,* in a suit for profits, that the lessee was entitled to recover so long as he was recorded *Durga Prasad* v. *Hazari Singh, I. L. R. 33 All 799,* followed MUHAMMAD AHMAD SAID KHAN *v.* MUHAMMAD MASIH-ULLAH KHAN (1912) **I. L. R. 34 All. 250**

——— s. 194.

——— *Lambardar—Suit by lambardar against co-sharers for excess of profits due to other co-sharers and himself—Lambardar not agent of co-sharers Held,* that a lambardar is not the agent of the co-sharers generally so as to be entitled to sue on their behalf to recover profits due to some of them from other co-sharers holding *sir* and *khud-kasht* lands in excess of their proper shares. BISHAMBHAR NATH *v* BHULLO (1911). **I. L. R. 34 All. 98**

——— s. 201

See TRANSFER OF PROPERTY ACT, s. 41. **I. L. R. 34 All. 22**

AGREEMENT.

——— between predecessors in title—

See JURISDICTION **I. L. R. 39 Calc. 739**

AGREEMENT IN RESTRAINT OF PROFESSION.

——— *Contract to play for a term and not to perform anywhere else until return to England, if enforceable by injunction—Indian Contract Act (IV of 1872), s. 27—Agreement in restraint of profession—Specific Relief Act (I of 1877), s. 57.* Where W, having contracted with C to play for C and not to play in any other theatre on his own or on some one else's behalf until after the expiration of the period contracted for and until after his return to England, performed in another theatre after the expiration of the period for which he was under contract with C but before his return to England, it was held that under s. 27 of the Indian Contract Act, the agreement being in restraint of a lawful profession, trade or business is void and as such would not be enforced by injunction S 57 of the Specific Relief Act is not applicable to this case. COHEN, E. M. D. *v.* ALLAN WILKIE (1912) **16 C. W. N. 534**

AGREEMENT IN RESTRAINT OF TRADE.

See CONTRACT ACT (IX OF 1872), SS 23, 27 . . **I. L. R. 34 All. 587**

AGREEMENT TO LEASE.

See REGISTRATION ACT, SS. 3, 17, 40 **I. L. R. 35 Mad. 63**

AGREEMENT TO SELL.

——— *Agreement by defendants 1 and 2 to sell property to plaintiff—Subsequent sale by the same defendants to defendants 3 and 4—Suit by the plaintiff for an order to execute a registered sale-deed and for possession—Burden of proof on defendants 3 and 4 to show that they were purchasers for value and bonâ fide and without notice.* Defendants 1 and 2 having agreed to sell their property to the plaintiff, they subsequently sold the same property to defendants 3 and 4 In a suit brought by the plaintiff for an order to execute a deed of sale and also for recovery of possession of the property. *Held,* confirming the decree awarding the claim, that defendants 3 and 4 having contracted to purchase the property from the same defendants who had contracted to sell it previously to the plaintiff, defendants 3 and 4 were bound to show three things, namely, that (*i*) they were purchasers for value and (ii) *bonâ fide,* and (iii) without notice. The plaintiff under his contract having a prior equity was entitled to succeed. One who owns property subject to a charge can, in general, convey no title higher or more free than his own and it lies always on a succeeding owner to make out a case to defeat such a prior charge. HIMATLAL MOTILAL *v.* VASUDEV GANESH (1912). **I. L. R. 36 Bom. 446**

AGRICULTURIST.

See CIVIL PROCEDURE CODE, 1908, S. 60. (1) (*c*) . . **I. L. R 34 All. 25**

See CIVIL PROCEDURE CODE, 1908, S 97. **I. L. R. 36 Bom. 536**

See DEKKHAN AGRICULTURISTS' RELIEF ACT, S. 2 . **I L. R. 36 Bom. 543**

See DEKKHAN AGRICULTURISTS' RELIEF ACT, S. 2 . **I L. R. 36 Bom. 199**

See DEKKHAN AGRICULTURISTS' RELIEF ACT, S. 2 . **I. L. R. 36 Bom. 496**

See DEKKHAN AGRICULTURISTS' RELIEF ACT, S. 2, EXPL. (*b*). **I L. R 36 Bom. 151**

AGRICULTURIST MORTGAGOR.

See DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879), SS. 47 AND 48 **I. L. R. 36 Bom. 624**

ALIENATION.

See HINDU LAW—LEGAL NECESSITY. **I. L. R. 36 Bom. 88**

See HINDU LAW—WIDOW. **I. L. R. 34 All. 207**

ALLEGORICAL POEM.

See OBSCENE PUBLICATION. **I. L. R. 39 Calc. 377**

ALWAN.

See "SHAWLS," MEANING OF **I. L. R. 39 Calc. 1029**

AMENDMENT OF DECREE.

——— successive applications for—

See DECREE, AMENDMENT OF.
I. L. R. 39 Calc. 265

ANCIENT LIGHTS.

See EASEMENT . **I. L. R. 39 Calc. 59**

ANNUITY.

See LIMITATION ACT (IX OF 1908), SCH. I, ARTS. 116, 120, 131 AND 132
I. L. R. 34 All. 246

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——— construction of—

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I. L. R. 39 Calc. 582

APOSTACY.

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I. L. R. 39 Calc. 409

APPEAL.

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I. L. R. 34 All. 115

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APPEAL—*contd.*

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I. L. R. 34 All. 282

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——— right of—

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I. L. R. 39 Calc. 754

1. DISMISSAL OF APPEAL.

——— *Civil Procedure Code (Act V of 1908), O. XLI, r. 18—Failure of appellant to file notice of appeal, dismissal of appeal, if proper.* Where a person preferred an appeal and at the same time deposited the fees for service of the notice of appeal on the respondent but did not file the notice to be served as required by the Circular Order of the High Court: *Held*, that the appeal could not be properly dismissed under O. XLI, r 18 of the Civil Procedure Code. GOL MAHOMED *v.* ABDUL JUBBAR (1912).
16 C. W. N. 498

2. LAND ACQUISITION.

1. ——— **Appeal**—*Land Acquisition—"Award"—Refusal to restore claim-case, if an award—Land Acquisition Act (I of 1894), s. 54.* An order of the Special Land Acquisition Judge, refusing to restore a claim-case by setting aside a decree passed *ex parte* for default of the claimant, is not an "award" and does not come under s. 54, of the Land Acquisition Act. An appeal does not, therefore, lie against such an order. HASUN MOLLA *v.* TASIRUDDIN (1911) . **I. L. R. 39 Calc. 393**

2. ——— *Land—Compulsory acquisition—Compensation—Award by Assistant Judge—Appeal to the District Judge—Second Appeal—Practice and procedure—Land Acquisition Act (I of 1894), ss. 53, 54—Civil Procedure Code (Act V of 1908), ss. 96, 100.* Where an award is made by the Assistant Judge under the provisions of the Land Acquisition Act, 1894, and there has been an appeal to the District Judge, no second appeal can lie from the appellate decision. NATHUBHAI NARANDAS *v.* MANORDAS LALDAS (1911) . . . **I. L. R. 36 Bom. 360**

3. REMAND.

——— *Civil Procedure Code (Act V of 1908), ss. 115, 104, sub-s. 2, 154, O. XLI, r. 90, O. XLIII, r. 1, cl. (j)—Sale in execution, application to set aside on ground of fraud before new Code came into force—Order passed since if open to second appeal—General Clauses Act (X of 1897), s. 6, cl. (c)—Retrospective operation of repealing statute—Revision—Erroneous decision on question*

APPEAL—*contd.*

3. REMAND—*concld.*

of limitation—Limitation Act (IX of 1908), ss. 7, 9. An application to set aside an execution sale which took place on the 17th September 1900, on the ground of fraud and material irregularity in publishing and conducting it, was made on the 23rd July 1907 and allowed on the 6th July 1908, but the order was set aside on appeal and the case remanded on the 6th November 1908 On the 12th June 1909, the application was again dismissed but on appeal the order was set aside and the case once more remanded on 29th January 1910 *Held*, that a second appeal against the order of remand did not lie under the new Code (Act V of 1908), O. XXI, r. 90 and s. 104, sub-s. (2) read with O. 43, r. 1, cl. (j), which applied to the case The right of second appeal which the judgment-debtor would have (by reason of repealed provisions of the old Code relating to appeals continuing to govern pending cases), had s 6, cl. (c) of the General Clauses Act of 1897, alone applied, must be held to have been taken away by the express terms of s. 154 of the new Code. The words " present right of appeal " means only a right existing on the 1st of January 1909 to appeal against a particular order passed under the former Code and subsisting on that date. *The Colonial Sugar Refining Company, Limited* v. *Irving*, [*1905*] *A. C. 369 ; Hornsey Local Board* v. *Monarch Investment Building Society, 24 Q B. D. 1.* referred to. Where the lower Appellate Court had held that the application was not time-barred as the applicant was a minor, overlooking the fact that when the sale took place the father of the applicant was alive so that limitation had already begun running against him : *Held*, that the fact that the lower Appellate Court overlooked the applicability of s. 9 of the Limitation Act to the case was not sufficient to justify interference in revision by the High Court. BENOD BIHARI BHADRA *v.* RAM SARUP CHAMAR (1912).

16 C. W. N. 1015

4. RIGHT OF APPEAL.

1. _____ *Civil Procedure Code (Act V of 1908), ss. 2. 47, O. XXI, r. 66—Interlocutory order in execution when appealable as decree—Order determining value of property to be sold in execution.* Every order passed in execution proceeding is not appealable. The order to be appealable as a decree must conclusively determine the rights of the parties. *Behary Lal Pundit* v. *Kedar Nath Mullick, I. L. R. 18 Calc. 469*, applied. No appeal lies against an order by which the value of property directed to be sold under a decree has been assessed at a certain figure according to the statement of the decree-holder. *Sivagami Achi* v. *Subrahmania Ayyar, I. L. R. 27 Mad. 259*, approved ; *Sivasami Naickar* v. *Ratnasami Naickar, I. L R. 23 Mad. 568, Ganga Prosad* v. *Raj Coomar Singh, I. L. R. 30 Calc. 617, Kashi Pershad Singh* v. *Jamuna Pershad Sahu, I. L. R. 31 Calc. 922, Saurendra Mohan Tagore* v *Hurruk Chand, 12*

APPEAL—*concld.*

4. RIGHT OF APPEAL—*concld.*

C. W. N. 542, referred to. DEOKI NANDAN SINGH *v.* BANSI SINGH (1911) . . **16 C. W. N. 124**

2. _____ *Civil Procedure Code (Act V of 1908), ss. 2, 47, O. 21, r. 66—Sale proclamation, valuation for purposes of—Order determining value of appealable.* An order by an executing court under O. XXI, r. 66, of the Civil Procedure Code, determining the valuation of immoveable properties attached and sought to be sold in execution of a decree is not appealable as a decree. *Deoki Nandan Singh* v. *Bansi Singh, 16 C. W N. 124*, followed. PANCH DUAR THAKUR *v.* MANI RAUT (1912) . . **16 C. W. N. 970**

3. _____ *Appeal—High Court—Bombay District Municipal Act (Bom. Act III of 1901), s 160—Municipality—Compulsory acquisition of land—Compensation—Arbitration—Decision of District Court—Construction of statutes.* No appeal lies from the decision of a District Court under cl. (3) of s. 160 of the Bombay District Municipal Act (Bom. Act III of 1901). Where a statute creates a right not existing at common law and prescribes a particular remedy for its enforcement, then that remedy alone must be followed. *Wolverhampton New Waterworks Co.* v. *Hawkesford, 6 C. B. N. S 336*, followed. CHUNILAL VIRCHAND *v* AHMEDABAD MUNICIPALITY (1911).

I. L. R. 36 Bom. 47

4. _____ *Question in execution—Civil Procedure Code (Act V of 1908), s. 47 : Held*, that the question involved in the appeal was a question in execution between the parties to decrees. Therefore it fell under the provisions of s. 47 of the Civil Procedure Code (Act V of 1908) and the order passed by the lower Court was appealable. SORABJI COOVERJI *v.* KALA RAGHUNATH (1911) . . . . **I. L. R. 36 Bom. 156**

5. _____ *Succession Certificate Act (VII of 1889), ss. 9, 25, 26—Civil Procedure Code (Act V of 1908), s. 96—Succession Certificate—Condition of Security.* An order granting a succession certificate accompanied by a condition that security should be given is appealable. An order directing that a certificate should not be granted unless security is furnished is not appealable *Bai Devkore* v. *Lalchand Jivandas, I. L. R. 19 Bom. 790*, explained. BAI NANDKORE *v.* SHA MAGANLAL VARAJBHUKHANDAS (1911) **I. L. R. 36 Bom. 272**

APPEAL COMMITTEE.

See MUNICIPAL ASSESSMENT.

I. L. R. 39 Calc. 141

APPEAL TO PRIVY COUNCIL.

1. _____ *Right of Appeal—Land Acquisition Act (I of 1894)—Award of the Court—Appeal therefrom incompetent.* The Collector having made his award under the Land Acquisition Act, 1894, as to the value of the land which had been taken for public purposes, two Judges of the Chief Court affirmed it sitting as " the Court"

APPEAL TO PRIVY COUNCIL—*concld.*

which under the Act means "a principal Civil Court of Original jurisdiction," and also as the High Court, to which an appeal is given from the award of "the Court:" *Held*, that an appeal from the High Court was incompetent. It was not expressly given by the Act and could not be implied. RANGOON BOTATOUNG COMPANY, LD. *v.* THE COLLECTOR OF RANGOON (1912).
L. R. 39 I. A 197

2. ——— *Limitation—Period between the signing of the judgment and the decree, how far allowed to be calculated in saving limitation in filing Privy Council Appeal—Limitation Act (IX of 1908), ss. 5, 12, Sch I, Art. 179.* Where the appellant to His Majesty in Council has failed to apply for a copy of the judgment and decree within the period allowed for filing the appeal, he cannot be allowed to say that he was prevented from filing the application in time by reason of the decree not being signed; and he is not entitled to ask the Court under s. 12 of the Limitation Act to deduct the period between the signing of the judgment and the signing of the decree in computing the period of limitation for appeal to His Majesty in Council. *Bechi* v *Ahsan-ullah Khan, I. L. R. 12 All. 461*, relied on. *Beni Madhab Mitter* v. *Matungini Dassi, I. L. R. 13 Calc. 104*, distinguished. HARISH CHANDRA TEWARY *v.* CHANDPUR COMPANY, LD. (1912) . **I. L. R. 39 Calc. 766**

APPELLATE COURT.

——— power of—

See COMPENSATION **I. L. R. 39 Calc. 157**

See RESTORATION OF IMMOVEABLE PROPERTY . **I. L. R. 39 Calc. 1050**

——— power of, to alter findings—

See RIOTING . **I. L. R. 39 Calc. 896**

APPROPRIATION.

See RE-SALE . **I. L. R. 39 Calc. 568**

ARBITRATION.

See DISTRICT MUNICIPAL ACT (BOMBAY), s. 160 . . **I. L. R. 36 Bom. 47**

See STAMP-DUTY **I. L. R. 39 Calc. 669**

——— *Award—Decree following award—Appeal, right of—Civil Procedure Code (Act V of 1908), second Schedule, rules 15 and 16—Letters Patent of 1865, cl. 15.* Where an application to set aside an award on the ground that it was made after the expiration of the period allowed by the Court has been refused, and subsequently judgment has been given according to the award, no appeal lies from such judgment on the same ground whether under the Letters Patent or under the Code of Civil Procedure. SHIB KRISTO DAW & Co. *v.* SATISH CHANDRA DUTT (1912).
I. L. R. 39 Calc. 822

ARMS ACT (XI OF 1878).

——— s. 19 (*c*).

——— *Intention not necessary to constitute offence.* An offence under s. 19 (*c*) of the Arms Act is committed when a person enters British India with a weapon he is not lawfully entitled to possess in this country. It is not necessary that there should be any particular intention in the mind of the offender to complete the offence. *Re* MAHOMED ISMAIL ROWTHER (1912).
I. L. R. 35 Mad. 596

——— s. 25.

See TRESPASS **I. L. R. 39 Calc. 953**

ARREST.

See HABEAS CORPUS.
I. L. R. 39 Calc. 164

ARTICLES OF ASSOCIATION.

See MORTGAGE . **I. L. R. 39 Calc. 810**

ASSAULT.

——— threat to—

See PROVINCIAL SMALL CAUSES COURTS ACT, SCH. II, CL. 35 (*l*).
I. L. R. 36 Bom. 443

ASSESSMENT.

See LAND REVENUE CODE, BOMBAY, SS. 56, 214 . . **I. L. R. 36 Bom. 91**

——— principle of—

See MUNICIPAL ASSESSMENT.
I. L. R. 39 Calc. 141

ASSESSORS.

——— opinion of—

See MAGISTRATE **I. L. R. 39 Calc. 119**

ASSIGNMENT.

See ADMINISTRATION BOND.
I. L. R. 39 Calc. 563

See CIVIL PROCEDURE CODE, 1908, O. XXI, R. 16 . **I. L. R. 36 Bom. 58**

See TRUSTS ACT, S. 5.
I. L. R. 36 Bom. 396

ASSIGNMENT OF DECREE.

See EXECUTION OF DECREE.
I. L. R. 34 All. 518

ATTACHMENT.

See CIVIL PROCEDURE CODE, 1882, SS. 278, 279, 280, 281.
I. L. R. 34 All. 365

See CIVIL PROCEDURE CODE, 1882, SS. 287, 293 . **I. L. R. 36 Bom. 329**

See CIVIL PROCEDURE CODE, 1882, S. 325 A . **I. L. R. 36 Bom. 510**

See CIVIL PROCEDURE CODE, 1908, SS. 47, 73, O. XXI, R. 55.
I. L. R. 36 Bom. 156

ATTACHMENT—*concld.*

See CIVIL PROCEDURE CODE, 1908, O. XXI, R. 16 **I. L. R. 36 Bom. 58**

See CIVIL PROCEDURE CODE, 1908, O. XXI, R. 57 . **I. L. R. 34 All. 490**

See GHATWALI TENURE **I. L. R. 39 Calc. 1010**

See JALKAR . **I. L. R. 39 Calc. 469**

ATTESTATION.

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 59 . **I. L. R. 36 Bom. 617**

See USUFRUCTUARY MORTGAGE. **I. L. R. 39 Calc. 227**

AUCTION-PURCHASER.

See PARTIES . **I. L. R. 39 Calc. 687**

AUCTION SALE.

See CIVIL PROCEDURE CODE, 1882, SS 287, 293 . **I. L. R. 36 Bom. 329**

AWARD.

See APPEAL . **I. L. R. 39 Calc. 393**

See ARBITRATION **I. L. R. 39 Calc. 822**

See CIVIL PROCEDURE CODE, 1908, SS. 96, 100 . **I. L. R. 36 Bom. 360**

See CIVIL PROCEDURE CODE, 1908, S 115. **I. L. R. 36 Bom. 105**

See COURT-FEE . **I. L. R. 39 Calc. 906**

See LAND ACQUISITION ACT. **I. L. R. 36 Bom. 599**

See SPECIFIC RELIEF ACT (I OF 1877), S. 30 . . **I. L. R. 34 All. 43**

B

BAILBOND.

——————— *Suicide of prisoner if discharges sureties.* When a person who has been let out on bail commits suicide, the sureties are discharged from their obligation to produce him. NRISINGHA DEB CHATTERJEE *v* THE KING-EMPEROR (1912) . . **16 C. W. N. 550**

BANKER AND CUSTOMER.

See TRUSTEE. **I. L. R. 35 Mad. 712**

——————— *Effect of a blank draft which is not addressed to any specific banker—Negligence of customer leading to payment of forged cheque by banker—Effect of negligence when not the proximate cause of payment* The plaintiffs were a Banking Corporation with their head office at Lahore and branch offices at Amritsar and elsewhere. The defendants were a Banking Corporation having a branch at Bombay. In 1904 the plaintiffs opened a current account with the defendants and sent the defendants a list of the officers of the plaintiffs authorized to sign for the

BANKER AND CUSTOMER—*concld.*

plaintiffs including the name of Madho Ram, the manager of the Amritsar office. Madho Ram had acted on occasions previous to this date as the manager of the Lahore office. It was the custom of Madho Ram when leaving the Bank premises for a short time both when acting as manager at Lahore and afterwards when manager at Amritsar to leave with the Accountant blank draft and blank letters of advice ready signed by him for use as occasion occurred. These drafts were not destroyed after his return. On the 2nd of October the defendants cashed a draft presented to them for payment for Rs. 10,000 purporting to have been signed by Madho Ram. The defendants had previously received a letter of advice also purporting to have been signed by Madho Ram. The defendants debited the plaintiffs with the payment. The plaintiffs repudiated the draft as a forgery and sued to recover Rs 10,000 from the defendants. The defendants denied that the draft was a forgery. In the alternative they submitted that the forged draft had been paid by them owing to the negligence of the plaintiffs, and that the latter were not entitled to recover the amount of the draft from them. *Held*, that it was probable that the draft was one left by Madho Ram when acting as manager of the Lahore office of the plaintiffs, but that the plaintiffs were not estopped from contending that the draft was not the draft of the plaintiffs *Held*, further, that it was not incumbent on the plaintiffs to contemplate the perpetration of such a crime as forgery or theft and that the negligent act of Madho Ram was not the proximate cause of the draft being cashed by the defendants and that the plaintiffs were therefore entitled to recover. *Société Générale* v. *The Metropolitan Bank, 27 L. T. 849, Swan* v. *North British Australasian Co , 32 L. J. Exch. 273, Smith* v. *Prosser, [1907] 2 K. B 735,* and *Baxendale* v. *Bennett, 3 Q. B. D 525,* followed. PANJAB NATIONAL BANK, Ld. *v.* THE MERCANTILE BANK OF INDIA, Ld. (1911) **I. L. R. 36 Bom. 455**

BENGAL ACTS.

——— **1868—VII.**

See SALE FOR ARREARS OF REVENUE.

——— **1879—I.**

See CHOTA NAGPUR LANDLORD AND TENANT PROCEDURE ACT.

——— **1880—IX.**

See BENGAL CESS ACT.

——— **1884—III.**

See BENGAL MUNICIPAL ACT.

——— **1895—I.**

See PUBLIC DEMANDS RECOVERY ACT.

——— **1897—V.**

See ESTATES PARTITION ACT.

BENGAL ACTS—*concld.*

——— **1899—III.**

See CALCUTTA MUNICIPAL ACT.

——— **1908—VI.**

See CHOTA NAGPUR TENANCY ACT.

——— **1909—V.**

See BENGAL EXCISE ACT.

BENGAL CESS ACT (IX OF 1880).

——— **s. 95.**

See ROAD-CESS RETURNS.
I. L. R. 39 Calc. 1005

See TEISHKHANA PAPER
I. L. R. 39 Calc. 995

BENGAL CHAMBER OF COMMERCE.

——— **arbitration by—**

See STAMP DUTY.
I. L. R. 39 Calc. 669

BENGAL EXCISE ACT (V OF 1909).

——— **ss. 46, 52, 55, 57.**

See EXCISABLE ARTICLES.
I. L. R. 39 Calc. 1053

BENGAL MUNICIPAL ACT (BENG III OF 1884).

——— **s. 15.**

——— *Rules under—Commissioners, election of, qualification for—Person 'authorised' to vote for corporation if eligible for election.* Any one possessing qualifications set out in Rule 2 of the rules framed under s. 15 of the Bengal Municipal Act and duly registered as a voter as provided by rules 4 to 12 of the said Rules is eligible under those rules for election as a Commissioner; and the fact that such a person is registered as voter under Rule 8 as a representative of a corporation instead of being registered in his own capacity does not disqualify him for election RASH BEHARY GHOSAL *v* J. C. STALKART (1912).
16 C. W. N. 710

——— **ss. 85, 114.**

See MUNICIPAL ASSESSMENT
I. L. R. 39 Calc. 141

——— **s. 353**— *Municipal offence, prosecution for—Consent of the Commissioners to prosecution, how to be evidenced—Sanction of prosecution by public authority, if should be in writing signed and sealed by the authority* The only evidence of a public authority is a writing under the seal and signature of that authority. Where the Vice-Chairman of a Municipality in starting two prosecutions against the accused under s. 217 of the Bengal Municipal Act and Municipal Bye-law No. 50, respectively, merely signed two "Forms," called "Forms of prosecution," in the remarks column of one of which was written "I have seen myself" and in that of other "prosecute:"

BENGAL MUNICIPAL ACT (BENG. III OF 1884)—*concld.*

——— **s. 353**—*concld.*

Held, that neither of these documents disclosed any authority, written or otherwise, showing the consent of the Commissioners or the Vice-Chairman on their behalf to a prosecution. RASUL BUKSH *v.* MUNICIPAL BOARD OF CHAPRA (1912).
16 C. W. N. 934

BENGAL, NORTH-WESTERN PROVINCES AND ASSAM CIVIL COURTS ACT (XII OF 1887).

——— **ss. 8, 20**—*Act No. III of 1907 (Provincial Insolvency Act), ss. 43, 46, 3—Appeal—Jurisdiction—Effect of order of District Judge assigning work to Additional Judge.* Where an Additional District Judge sentenced an applicant for insolvency under s. 43 of the Provincial Insolvency Act, 1907, acting in the matter under an order of the District Judge assigning the particular class of work to him under s 8 of the Bengal, North-Western Provinces and Assam Civil Courts Act, 1887, it was *held* that an appeal from the Additional Judge's order lay to the High Court and not to the District Judge. MAKHAN LAL *v.* SRI LAL (1912) . . . **I. L. R. 34 All. 383**

——— **ss. 8 (2), 21 (3)**—*Assignment to Additional Judge of cases coming from a particular district—Jurisdiction.* A District Judge has power not merely to make over appeals to an Additional Judge for hearing, but to direct that all appeals and other cases coming from a particular area within the judicial division shall be filed in his Court. MUTSADDI LAL *v.* MULE MAL (1912) . . **I. L. R. 34 All. 205**

BENGAL REGULATION.

——— **1793—XV—**

——— *Mortgage—Redemption—Limitation—Act No XIV of 1859 (Limitation Act), s. 1 (12)—Accounts* A usufructuary mortgage was executed in the year 1852, in a place to which the provisions of Bengal Regulation XV of 1793 applied It provided that the mortgagees should enter into possession and collect the rent and pay the Government revenue and defray collection charges, etc, therefrom and retain the balance in lieu of interest. There was to be no accounting on either side and the mortgagor was to be entitled to redeem on payment of the principal sum of Rs. 252: *Held*, on suit by the representative of the mortgagor to redeem, brought within 60 years from the date of the mortgage, that the suit was within time; that the mortgage could not be considered as redeemed in the strict sense of the term from the moment when the profits received by the mortgagees became equal to the amount due to them for principal and interest, and that the mortgagor was, notwithstanding anything contained in the deed, entitled to an account of the profits received by the mortgagees. *Sudarshan Das Shastri* v. *Ram Prasad, I L R. 33 All. 97*, followed. *Shafi-un-nissa* v. *Fazl Rab, 7*

BENGAL REGULATION—*concld.*

——— . 1793—XV—*concld.*

All L J. 787, and Badri Prasad v *Murlidhar I.L R 2 All 593*, distinguished HABIB-ULLAH *v.* ABDUL HAMID (1912) . **I. L. R. 34 All. 261**

BENGAL TENANCY ACT (VIII OF 1885).

——— s. 3, cl. (*9*)—*Undivided share in a parcel of land let out to tenant, if holding—Rent of undivided share if enhancible—Res judicata—Decision in previous suit which was dismissed on the merits, that rent enhancible, if binding on defendant* When the owner of an undivided 6 annas share in a *howla* gave a lease of that share to the owner of the remaining share, and later on sued the latter for enhancement of rent under s. 30 of the Bengal Tenancy Act · *Held*, that an undivided share in a parcel or parcels of land is not a holding within the meaning of s. 30 of the Bengal Tenancy Act, and the suit was not maintainable. *Jardine Skinner & Co.* v. *Rani Surut Soondari Debi, 3 C. L. R 140, Baidya Nath* v. *Sudharam, 8 C. W. N. 751*, distinguished. *Hari Charan Bose* v. *Ranjit Singh, I. L. R. 25 Calc. 917; Baidya Nath De* v. *Ilim, I L. R. 25 Calc. 917; Haribole Brohmo* v. *Tasimuddin Mondul, 2 C. W. N. 680; Ahadulla* v. *Gagan, 2 C L J. 10*, followed. PARBUTTY DEBYA *v* MATHURA NATH BANERJEE (1912) **16 C. W. N. 877**

——— s. 5, cl. (*5*)—Where the lower Appellate Court held that the presumption under s. 5, cl. (*5*) of the Bengal Tenancy Act, that a holding comprising an area of more than 100 bighas of land was a tenure and not a raiyati holding, had not been displaced by the contrary being shown · *Held*, that it was not open to the High Court in second appeal to interfere with the finding of the lower Appellate Court that the holding was a tenure. *Sulatu Dass* v *Jadunath Dass, 8 C. W. N. 774*, referred to. RAMANUJ DAS MOHANTA *v.* THE MIDNAPUR ZEMINDARY CO., LD (1912). **16 C. W. N. 725**

——— ss. 6 and 7—*Permanent tenure held at fixed rent—Enhancement of rent by compromise, if makes rent enhancible under the Bengal Tenancy Act (VIII of 1885), ss. 6 and 7.* A permanent tenure, the origin of which could be traced back to 1818, was held under a lease in which it was stipulated that "there shall be no increase or diminution of the rent of Rs. 17 sicca" In 1863, there being litigation, the tenant for the time being entered into a compromise with the zemindar by which he agrees to pay an enhanced rent of Rs. 108-13-12 gds.: *Held*, that from the mere fact that the rent had been once enhanced it did not follow that it could be enhanced again. That although by mutual agreement the rent was enhanced from Rs. 17 to Rs. 108-13-12 the tenancy which was identical with that which had been traced to 1818, continued to be subject to the provision against increase in the original lease. RAMANUJ DAS MOHANTA *v.* THE MIDNAPUR ZEMINDARY CO., LD. (1912) . **16 C. W. N. 725**

BENGAL TENANCY ACT (VIII OF 1885)—*contd*

——— s. 48.

See UNDER-RAIYAT.

I. L. R. 39 Calc. 839

——— *Raiyat letting out a portion of holding to under-raiyat—Rent if must be limited to 25 per cent in excess of rent assessable on that plot* S. 48 of the Bengal Tenancy Act which provides that the landlord of an under-raiyati holding at a money-rent shall not recover rent exceeding that which he himself pays by more than 25 per cent applies only to cases on which the land held by the raiyat is co-extensive with the land held by the under-raiyat. The mere fact that the raiyat's lease showed what rent was assessed in respect of the particular plot let out to the under-raiyat did not entitle the latter to pay rent up to 25 per cent in excess of the assessed rate NIM CHAND SAHA *v* JOY CHANDRA NATH (1912).

I. L. R. 39 Calc. 839
16 C W. N. 857

——— s. 49, cl. (*b*).

See UNDER-RAIYAT

I. L. R. 39 Calc. 278

——— s. 52—*Landlord and tenant—Encroachment by tenant—Adverse possession for over twelve years—Tenant if bound to pay additional rent* A tenant is entitled to hold *khas* land of his landlord upon which he has encroached as part of his original holding if more than 12 years before the landlord's suit he denied the landlord's right to any separate rent from him in respect of the land and has forcibly in assertion of his claim appropriated the entire crop and continued in possession. The landlords, apart from s. 52 of the Bengal Tenancy Act, cannot recover additional rents in respect of such land. *Ishan Chandra Mitter* v. *Raja Ramranjan Chakraverty, 2 C. L. J. 125*, and *Raktoo Singh* v. *Sudhran Ahir, 8 C. L J. 557*, referred to. TARAN CHANDRA GHOSE *v.* GANENDRA NATH ROY (1912) **16 C. W. N. 235**

——— s. 65—

1. ——— *Bengal Tenancy Act (VIII of 1885), ss. 163, 164, 165—Decree for rent against tenant in possession if one under Bengal Tenancy Act—Irregular sale, effect of—Tenure if passes by sale not held strictly in accordance with the provisions of the Act—'Right, title and interest' in sale proclamation, if may include the whole tenure—Mortgagee who purchases mortgage property in execution, if may fall back on mortgage to protect it against purchaser at rent sale.* A decree obtained in a suit for rent against a person in possession who is also the legal representative of the last registered tenant is a decree for rent within the meaning of the Bengal Tenancy Act. Where a tenure was sold in execution of a decree for rent, but on the first day the bidding did not come up to the decretal amount, and the property was sold notwithstanding without any fresh proclamation

BENGAL TENANCY ACT (VIII OF 1885)—*contd*

——— **s. 65**—*concld.*

and sale under s. 165 : *Held*, that as the sale could not in the circumstances be under s. 164, it was not a sale under the Bengal Tenancy Act and did not operate to transfer more than the right, title and interest of the judgment-debtor. The special and stringent provisions of the Bengal Tenancy Act relating to sales is part of a public policy intended for the benefit of all parties concerned. If the landlord wants special results to follow from it under the Act, he must proceed strictly in accordance with its provisions. Where a mortgagee of a tenure gets a decree and purchases the mortgaged tenure at a sale in execution of his mortgage decree, and the tenure is subsequently sold again in execution of a rent-decree against the original tenant, it is open to the mortgagor to fall back on his mortgage as a shield against the purchaser under the rent-sale, when that sale is not free from incumbrances. *Akhoy Kumar* v. *Bejoy Chand, I. L. R. 29 Calc 813*, not followed. *Bhawani Koer* v. *Mathura Prosad, 7 C L. J. 1, 20*, referred to. BAN BEHARI KAPUR *v* KHETTERPAL SINHA ROY (1911) . . **16 C. W. N. 259**

2. ——— *Co-sharer landlords—Separate decrees for rent for the same period—Sale of the tenure in satisfaction of one of the decrees—Subsequent sale of the same tenure in execution of the other decree, if permissible—First charge—Priority.* Where two co-sharer landlords obtained separate decrees for rent for the same period (each making in his own suit his co-sharer a party) and the tenure was sold in satisfaction of the decree obtained by one of them : *Held*, that the other co-sharer landlord could not execute his decree by sale of the same tenure after it passed into the hands of the auction-purchaser and all that he was entitled to was to recover the sum due to him which from being a first charge on the tenure itself, had, on the sale of the tenure, passed as a first charge on the surplus sale-proceeds. When two persons have charges on a property of equal priority, the first who takes out execution is entitled to satisfy his decrees by sale of the property and the other person loses his right to proceed against that property. NILAMBAR SAHA *v.* SATYAPRIYA GHOSAL (1912) . . . **16 C. W. N. 701**

——— **s. 66**—*Ejectment suit for—Arrears of rent in respect of which decree may be sought—Waiver.* The landlord may institute a suit for ejectment under s. 66 of the Bengal Tenancy Act at the time of the year mentioned in that section, but if he does not exercise his option at once but claims rent for any portion of the year subsequent thereto he treats the tenancy as existing after the specified date and cannot ask for ejectment in respect of arrears due for the year preceding that date. *Sitanath* v. *Basudeb, 2 C. L. J. 540 ; Sheikh Peer Bux* v. *Mouzah Ally, Marsh. 25 ; Jogeshuri* v. *Ebrahim, I. L. R. 14 Calc. 33*, followed. KALANAND SINGH *v.* GUNPUT SINGH (1911). **16 C. W. N. 104**

BENGAL TENANCY ACT (VIII OF 1885)—*contd.*

——— **s. 85**—An agreement by a raiyat to grant a sub-lease to an under-raiyat after the expiry of a lease is valid. ALI MAHAMMAD BEPARI *v.* NAYAN RAJAH BHUIYA (1903). **16 C. W. N. 620**

——— A permanent sub-lease by a riyat is binding as between the parties to the contract. *Basaratullah* v. *Kasirunnessa, 11 C. W. N 190*, doubted. Where an under-raiyati lease provided that the tenant was at no time to be ejected from the land but that after the expiry of nine years a fresh settlement would be made and until it was made the conditions of the *kabuliyat* were to remain in force : *Held*, that the lease was intended to be a permanent lease. ABDUL KARIM PATWARI *v.* ABDUL RAHAMAN (1911) . . . . **16 C W. N. 618**

——— **s. 98, cl. (*3*)**—*Common manager of representative of proprietors—Suit against common manager if properly framed—Owners not all made defendants within time—Limitation—Limitation Act (XV of 1877), s. 22.* A common manager under s. 98, cl. *3*, of the Bengal Tenancy Act, is a representative of the proprietors for the purpose of defending a suit as well as for instituting suits Where, therefore, a suit was brought making the common manager as well as some of the proprietors parties, but some of the co-proprietors were made parties after the period of limitation allowed by law. *Held*, that the suit against the common manager was rightly brought and that as the suit as against him was in time, it was immaterial whether some of the proprietors were brought on the record out of time. CHOUDHRY KIRTIBASH DAS *v.* UMESH CHANDRA DUTT (1911). **16 C. W. N. 96**

——— **s. 149**—*Question of title if to be decided in suit under—Appeal—Bengal Tenancy Act (VIII of 1885), s. 153—Suit framed as for determination of title.* S 149 of the Bengal Tenancy Act provides a very simple and expeditious machinery for the purpose of protecting a tenant against the harassment of litigation consequent on rival claims of title to the reversion of the tenant's interest. Sub-s. (*3*) of s. 149 of the Bengal Tenancy Act contemplates a suit which culminates not in a decree, but in an order of a limited kind an order restraining payment out of the money. It is not necessary to decide the question of title in issuing an injunction under that section. In a suit brought under s. 149, sub-s. (*3*) of the Bengal Tenancy Act, in which the plaintiff keeps within the terms of the section and asks only for the relief contemplated by it, no question of title can be decided. It would be otherwise if the suit be framed as one for determination of the Plaintiff's title. *Semble* : An appeal would not lie under s. 153 of the Bengal Tenancy Act against an order under s. 149, sub-s. (*3*) of the Act. TIRTHABASI SINGH *v.* PURNA CHANDRA NAG (1912). **16 C. W. N. 558**

BENGAL TENANCY ACT (VIII OF 1885)—*contd.*

——— s. 159—

1. ——— *Suit by auction-purchaser to annul incumbrance—Onus of proof—Defendant if must prove his interest to be "protected"—Evidence Act (I of 1872), s 106—Second appeal—Evidence adduced on both sides, but evidence considered only as produced by the party on whom onus wrongly placed—Finding, if of fact* In a suit by a purchaser of a tenure or holding at a rent sale to annul an alleged incumbrance the onus is in the first place on the plaintiff to show that the interest sought to be annulled is an "incumbrance" but when once that is established the onus shifts on to the incumbrancer to prove that his incumbrance is saved through being a "protected interest." *Narmada Sundari Devi* v. *Tarip Mollah, 9 C. L. J 490*, referred to. *Samir Jama* v *Mahabharat Baktu, 16 C. W. N. 777*, approved. The existence of such a "protected interest" as a right of occupancy is a matter specially within the knowledge of the person claiming it and the onus under s. 106, Evidence Act, is on him. The proposition that as soon as there is conflict of evidence, the question of onus disappears presupposes not only the existence of evidence on both sides, but also consideration of both by the Court, so that where the Court of Appeal below dismissed the plaintiff's suit on the ground of his failure to discharge an onus wrongly placed on him and ignoring altogether the evidence adduced by the defendant, the High Court on second appeal interfered. HARI MONI DEBI *v.* MOTI SHEIKH (1912).
16 C. W. N. 779

2. ——— *Suit to annul incumbrance—Burden of proof—Separated share of tenure dealt with as distinct tenure* When a share in a tenure has been duly and effectually recognised by both landlords and tenants as a separated share and as constituting a distinct tenure, the purchaser of such a share at a sale for its arrears acquires the rights of a purchaser of an entire tenancy within the meaning of s 159 of the Bengal Tenancy Act. The burden is on the purchaser of a tenure at a sale for its arrears to prove that the interest sought to be annulled was an "incumbrance" within the meaning of cl. (*a*) of s. 161 of the Bengal Tenancy Act, and if he proves this he starts his case sufficiently; and the burden shifts upon the defendant to prove that he has a "protected interest" within the meaning of s. 160. *Durga Prosanna Ghose* v. *Kali Dass Dutt, 9 C. L. R, 449, Gobinda Nath Shaha Chowdhury* v. *Reily, I. L. R. 13 Calc 1, Narmoda Sundari Devi* v. *Tarip Mollah, 9 C. L. J. 490*, distinguished. SOMIR JAMA *v.* MOHABHARAT RAKTU (1910) . . **16 C. W. N. 777**

——— s. 160 (*g*).

See LANDLORD AND TENANT.
I. L. R 39 Calc. 138

——— *Protected interest—Mortgage by a putnidar if protected interest—Sale under the Bengal Tenancy Act—Putni Regulation (VIII of 1819), s 11.* Where a *putni kabuliyat* provided as follows: "I, in succession to my sons, grandsons, etc., heirs and representatives, shall, with felicity, hold and enjoy the aforesaid share, with right to make gift, sale, mortgage, etc., and *dar-putni mourasi, mokurari, patnidari*, etc., settlements at a proper *jama* and to every way make alienations and create encumbrances;" and the *putnidar* created a mortgage in favour of the plaintiff. *Held*, that the recitals in the *kabuliyat* merely set out the ordinary incidents of a *putni* grant as laid down in s. 3 of the Putni Regulation and did not give the *putnidar* an express authority in writing by the landlords to create a mortgage and the mortgage created in favour of the plaintiff by the *putnidar* was not a "protected interest" within the meaning of s. 160, cl (*g*) of the Bengal Tenancy Act. The right of a *putnidar* to give the tenure on mortgage is subject to the conditions imposed by s 11 of the Putni Regulation The "express authority" referred to in that section means such authority apart from the conditions of the lease. The effect of s. 160, cl (*g*) of the Bengal Tenancy Act would further be subject to the saving provisions of cl (*e*) of s 195 of the same Act KRISTO DAS LAHA *v* JOTINDRA NATH BASU (1912)
16 C. W. N. 561

BENGAL TENANCY ACT (VIII OF 1885)—*contd.*

——— s. 160 (*g*)—*concld.*

——— s. 161—*Bengal Tenancy Act (VIII of 1885), Chap. XIV, ss. 3, cl 9, 161, 167—'Incumbrance,' title by adverse possession if—'Holding,' if includes under-raiyati—Under-raiyati if may be sold under Chap. XIV, Bengal Tenancy Act—Sale of under-raiyati for arrears of rent, purchaser if can annul incumbrances.* Title acquired by adverse possession for the statutory period by a trespasser in the lands of a defaulting tenant is an incumbrance within the meaning of s. 161 of the Bengal Tenancy Act. *Gocool Bagdi* v. *Debendra Nath Sen, 14 C. L. J. 136*, followed. An under-raiyat's interest cannot be sold for arrears of rent under Chap. XIV of the Bengal Tenancy Act so as to attract to the sale the special consequences attached to such sales; a purchaser of an under-raiyat's interest has therefore no right to annul incumbrances under s. 167 of the Bengal Tenancy Act, which applies only in cases of sales under Chap XIV. The word 'holding' except where it has been used in the Act expressly to include lands held by an under-raiyat has the meaning given to it in s. 3, cl. (*9*) and does not include lands held by an under-raiyat. The word as used in Chap. XIV does not include such lands. MUNSAB ALI *v.* ARSADULLA (1912) **16 C. W. N. 831**

——— s. 167—The mere circumstance that a notice under s. 167, Bengal Tenancy Act, is signed by a Deputy Collector does not invalidate such notice, if he acted on behalf of the Collector. GIRIS CHANDRA GUHA *v.* KHAGENDRA NATH CHATTERJEE (1911) . . **16 C. W. N. 64**

BENGAL TENANCY ACT (VIII OF 1885)—*contd*

——— s. 170—

1. ——— *Previous purchaser not made defendant if may deposit.* A person who had purchased a permanent tenure long prior to the institution of the suit in which a decree for rent was obtained by the landlord is not entitled to make a deposit under s 170 (*3*) of the Bengal Tenancy Act. Such a person was permitted to make the deposit when it appeared that previous deposits made by him were withdrawn by the landlord. *Jotindra Mohun Tagore* v. *Durga Dabe, 10 C. W. N. 438*, approved. *Radhika Nath Sircar* v. *Rakhal Raj Gayen, 13 C. W. N. 1175, Jugal Mohini Dassi* v. *Srinath Chatterjee, 12 C. L. J. 609*, distinguished. RANI BRINDARANI CHOUDHRANI *v.* ANNODA MOHAN RAY CHOUDRY (1911). **16 C. W. N. 94**

2. ——— *Transferee of occupancy holding, if may make deposit—Voidable interest.* A transferee of an occupancy holding not transferable by custom has no interest in his holding and is not entitled to make a deposit under s. 170 (*3*) of the Bengal Tenancy Act, to avoid a sale of the holding in execution of the landlord's decree for rent. To permit such a transferee to make the deposit and thus prevent execution is an irregular exercise of jurisdiction open to revision by the High Court. *Nissa Bibi* v. *Radha Kishore, 11 C. W. N. 312; Prosunno Kumar* v. *Bama Churn, 13 C. W. N. 652*, followed. *Hari Das* v. *Udoy Chandra, 8 C. L J. 261; Omar Ali* v *Basiruddeen, 7 C. L. J. 282, Thomas Barclay* v. *Syed Hossein, 6 C. L. J. 601*, referred to. NALINI BEHARY RAY *v.* FULMANI DASI (1912). **16 C. W. N. 421**

——— s. 174—

1. ——— *Orissa—Sale under Act (VIII of 1865, B. C.)—Extension of the Bengal Tenancy Act—Repeal of inconsistent provisions of Act VIII of 1865, B. C.* In Orissa, since the extension of Chap XIV of the Bengal Tenancy Act, a sale under Act VIII of 1865 is liable to be set aside on an application under s. 174 of the Bengal Tenancy Act, the extension to Orissa of the provisions of the former Act having had the effect of repealing the inconsistent provisions of Act VIII of 1865 BARKAL PARIDA *v.* JOGENDRA NATH SEN (1911) . . . **16 C. W. N. 311**

2. ——— *Time for depositing money, if may be extended by Court—Order under, if appealable—Inconsistent positions, bar against taking up—Party if may treat the same order as a decree and as not a decree at different stages—Civil Procedure Code (Act V of 1908), s. 47, O. XLIII, r. 1, cl.(j)—Amount payable if includes costs—Decree-holder purchaser, if entitled to 5 p. c. on purchase-money—Execution petition, copy of decree and vakalatnama if necessary for—Poundage fee, if must be deposited with purchase-money.* An order under s. 174 of the Bengal Tenancy Act is an order within s. 47 of the Civil Procedure Code and a second appeal lie against such order. The Court has no authority to extend the time within which deposit of purchase-money has to be made under s. 174 of the Bengal Tenancy Act. *Amir Hossain* v. *Nanak Chand, 14 C. W. N. 882; Gulab Chand* v. *Bahuria, 13 C. L J. 432*, distinguished. *Bibi Sharifan* v. *Md. Habibuddin, 13 C. L. J. 535*: s. c. *15 C. W. N., 685; Kabilaso* v. *Raghunath, I. L. R. 18 Calc 48; Akbar* v. *Sukhdeo, 13 C. L. J. 467; Mothura* v *Bangsidhari, 10 I. C. 880*, referred to. If therefore an amount shorter than the amount payable was deposited within the prescribed period and the balance paid out of time under an order of the Court the sale could not be set aside In calculating the amount which the judgment-debtor must deposit, 5 per cent. on the purchase-money (even where the purchaser is the decree-holder himself) and costs must be included, but the judgment-debtor is not liable to deposit the costs of taking a copy of the decree or of the stamp on the vakalatnama or the poundage fee. The amount deposited within the prescribed time in this case being sufficient to cover the amount payable after excluding the costs of taking a copy of the decree, of the stamp on the vakalatnama and the poundage-fee, the order of the first Court rejecting an application to have the sale set aside was reversed. A copy of the decree of which execution is sought is not necessary for an application for execution. The authority of a pleader in a case does not terminate with the decree but extends to execution proceedings. A fresh vakalatnama is not therefore necessary for the purposes of execution proceedings. Where the judgment-debtors appealed against an order in execution, treating it as one under s. 174 of the Bengal Tenancy Act, read with s. 47, Civil Procedure Code, it was not open to them on second appeal by the decree-holders to urge that such appeal did not lie. *Bindeswari Charan Singh* v. *Lakpat Nath Singh, 15 C. W. N, 725*, referred to. RAGHUBAR DOYAL SUKUL *v.* JADUNANDAN MISSER (1911). **16 C. W. N. 736**

——— s. 182—

1. ——— *Sub-lease of homestead by raiyat—Permanent under-raiyati lease if valid—Construction of lease.* A sub-lease by a raiyat of the homestead portion of his holding is governed by the Bengal Tenancy Act. *Baburam Roy* v. *Mohendra Nath Samanta, 8 C. W. N. 454*, followed. ABDUL KARIM PATWARI *v.* ABDUL RAHAMAN (1911) . . **16 C. W. N. 618**

2. ——— *Homestead owned by raiyat of different villages, occupancy right if may be acquired in—Ejectment—Non-occupancy raiyat.* The language of s. 182, Bengal Tenancy Act, justifies the proposition laid down in *Kripanath Chakraburti* v. *Sheikh Anu, 4 C. L. J. 332 · 10 C. W. N., 944*, that in the absence of local custom or usage the provisions of the Bengal Tenancy Act are applicable to the homestead of a person

BENGAL TENANCY ACT (VIII OF 1885)—*concld.*

——— **s. 182**—*concld.*

who is a raiyat although he is not a raiyat of the village in which the homestead land is situated and is not a raiyat of the same landlord as the landlord of the homestead land. *Quære*: Whether to establish his occupancy right in the homestead the raiyat must show that he was a "settled raiyat of the village" in which the homestead is situated within the meaning of s. 20 of the Act. *Held*, that if he was not an occupancy raiyat, he would be a non-occupancy and could not be ejected except in the manner provided by ss. 44 and 45 of the Act. HARIHAR CHATTAPADHYA *v.* DINU BERA (1911).

16 C. W. N 536

——— **Sch. III, Art. 3**—Where a landlord keeps a raiyat out of possession of his holding for the period specified in Art. 3 of Sch. III of the Bengal Tenancy Act, the raiyat's title in the holding is extinguished by adverse possession, on general principles, if not under s. 28 of the Limitation Act. NANDA KUMAR DEY *v.* AJODHYA SAHU (1911)

16 C. W. N. 351

——— **Sch. III, Art. 6**—*Bengal Tenancy Act (VIII of 1885), ss 148A, 158B, Sch. III, Art. 6—Decree by co-sharer landlord for share of rent if a rent decree—Limitation, special, if applies* A decree for rent obtained by a co-sharer landlord in a suit not brought under s. 148A or s. 158B of the Bengal Tenancy Act, is a money decree and the special limitation applicable to applications for execution of rent decrees does not apply to such a decree. K. B. DUTT *v.* GOSTHA BEHARY BHUIYA (1912).

16 C. W. N. 1006

BETROTHAL OF DAUGHTER.

See HINDU LAW—LEGAL NECESSITY.

I. L. R. 36 Bom. 88

BOARD NOTIFICATIONS.

See EXCISEABLE ARTICLES.

I. L. R. 39 Calc. 1053

BOMBAY ACTS.

——— **1865—I.**

See SURVEY AND SETTLEMENT ACT.

——— **1874—III.**

See HEREDITARY OFFICES ACT.

——— **1879—V.**

See LAND REVENUE CODE, BOMBAY.

——— **1879—XVII.**

See DEKKHAN AGRICULTURISTS' RELIEF ACT.

——— **1888—III.**

See BOMBAY MUNICIPAL ACT.

BOMBAY ACTS—*concld.*

——— **1890—IV.**

See BOMBAY DISTRICT POLICE ACT.

——— **1898—IV.**

See BOMBAY IMPROVEMENT ACT.

——— **1901—III.**

See DISTRICT MUNICIPAL ACT.

1906—II.

See MAMLATDARS' COURTS ACT.

BOMBAY DISTRICT POLICE ACT (BOM. IV OF 1890).

——— **s. 42**—*District Magistrate—Order for prevention of disorder—Promulgation of the order—Presence of the Magistrate at the place when the order is promulgated—Ultra vires order.* A District Magistrate issued a notification, under the provisions of s. 42 of the Bombay District Police Act, 1890, prohibiting circulation of certain pictures throughout the whole District. The notification was promulgated in all the Taluka head-quarters. The Taluka head-quarters of the village, where the accused lived, was nearly twelve miles distant. At the time when he issued the notification, the District Magistrate was at a considerable distance from the village. The accused was convicted of having disobeyed the notification, in that he sold the prohibited pictures at his village: *Held*, reversing the conviction and sentence, that the notification in question could not be upheld under s. 42, because (i) it was not promulgated at the village where the accused lived; and (ii) the District Magistrate was not present at or near the village at the time of the promulgation. *Per* Chandavarkar, *J.*—The preliminary conditions essential under the provisions of s. 42 of the District Police Act, for the exercise of the jurisdiction conferred by it, are these: (i) the jurisdiction is conferred on the Magistrate of the District or, in his absence and subject to his own order, the Magistrate of the First Class; (ii) these must have jurisdiction in the town or village where the jurisdiction is intended to operate; (iii) they must be present in such town or village or in the neighbourhood thereof at the time the jurisdiction under the section is set in motion. EMPEROR *v.* DATTATRAYA LAXMAN (1912) . **I. L. R. 36 Bom. 504**

BOMBAY IMPROVEMENT ACT (BOM. ACT IV OF 1898).

——— *Tribunal of appeal—Jurisdiction—Apportionment of compensation money—Questions of title of several claimants.* The Tribunal of Appeal constituted under the provisions of the City of Bombay Improvement Act (Bom. Act IV of 1898) has jurisdiction to decide questions relating to the apportionment of compensation money as between several claimants and also to decide questions of title. PANDURANG BHIWAJI *v.* GANGARAM (1911) . . .

I. L. R. 36 BOM. 203.

BOMBAY MUNICIPAL ACT (BOM. ACT III OF 1888).

———— ss. 379, 379A.—*Overcrowding of house—Notice to abate the nuisance—Service of notice—Owner—Rooms in a building let to different tenants—Overcrowding by tenants—Notice to the owner.* The notice contemplated by s. 379A of the City of Bombay Municipal Act (Bom. Act III of 1888) should be given to the owner of a building in cases where the owner has let rooms in the building to separate tenants who cause overcrowding. MUNICIPAL COMMISSIONER FOR THE CITY OF BOMBAY *v.* MATHURADAS (1911)

I. L. R. 36 Bom. 81

BOMBAY MUNICIPAL ACT (BOM. III OF 1888 AS AMENDED BY ACT V OF 1905).

———— s. 297 (*1*) (*b*)—*Powers of the Municipal Commissioner to prescribe a fresh line on either side of a street in substitution for any line previously prescribed by him—Power to prescribe a line of the street with the view to widening the street, ss. 297-301—Significance of heading to clauses.* In 1903 the Municipal Commissioner of Bombay prescribed the regular line of a certain public street in Bombay, in accordance with the provisions of s. 297 of the Municipal Act (Bom. Act III of 1888). No record was kept of the said line. In 1909, in ignorance of the said line previously prescribed, the Municipal Commissioner prescribed a fresh line for the same street, without obtaining authority from the Corporation, and entered upon the land of the plaintiff which lay within the said fresh line. Subsequently, having been informed of the previous line, the Commissioner obtained authority to prescribe a fresh line as previously irregularly prescribed and subsequently again entered on the part of the plaintiff's land within that line. Both the said line prescribed in 1903 and the subsequent line prescribed in 1909 were prescribed for the purpose of widening the said street for the purpose of enabling an overbridge to be built on it. The plaintiff contended that, as the object of the Commissioner in prescribing the line of the street in both cases was to widen the street, his action was illegal and that the lines prescribed were not made the regular lines of the street. Further, that in any event, the Commissioner should be ordered to take up the plaintiff's land and pay for it up to the line prescribed in 1903, the only legal line of the street at the date when the Commissioner first entered the plaintiff's land. *Held*, that, subject to the provisions of s. 297 of the Municipal Act, the Commissioner might prescribe a line of a street, whether in substitution for a previous line or not, and that his action would not be invalid merely because it had for its object the widening of the street. *Held*, also, that the headings of clauses are not to be relied on. *Held*, further, that *Essa Jacob* v. *Municipal Commissioner of Bombay, I. L. R. 25 Bom. 107*, is no longer an authority since the amendment of the Act in 1905. MUNICIPAL COMMISSIONER FOR THE CITY OF BOMBAY *v.* MUNCHERJI PESTONJI (1911) . . . I. L. R. 36 Bom. 405

BOMBAY REGULATION (II OF 1827).

See HINDU LAW—CASTE QUESTION.

I. L. R. 36 Bom. 94

———— s. 56—*Pleader—Pleader in the mofussil—Duty towards client—Winding up proceedings—Pleader must not represent parties whose interests are conflicting.* By the custom of the mofussil a pleader employed by a party to a proceeding before a Court is bound faithfully and exclusively to serve that party throughout the whole proceeding. The pleader in the mofussil is not merely an advocate—he is the confidential legal adviser of his client and does for him those things which in the Presidency towns are often done by solicitors. For legal advice, for the prosecution of legal proceedings in all their stages, the client depends on the pleader. This dependence makes the position of the pleader peculiarly onerous and binds him to give exclusive attention to the interests of the client throughout any proceedings in which he is engaged. In winding up proceedings, a single pleader must not represent two different creditors whose interests are known to conflict. A pleader must not accept a vakalatnama when he knows that he cannot act for his client throughout the proceedings. A pleader in defending himself against charges of professional misconduct made certain statements. He was dealt with under the disciplinary jurisdiction for making them. It was contended in his behalf that the statements made by him in defence must be regarded as having been made by an accused and were therefore protected. *Held*, overruling the contention, that the pleader was writing to the Court as a pleader and was responsible as such for the statements made by him. GOVERNMENT PLEADER *v.* BHAGUBHAI DAYABHAI (1912).

I. L. R. 36 Bom. 606

BOND.

See CONSTRUCTION OF DOCUMENT.

16 C. W. N. 957

BOOKS.

———— translations of—

———— *Books, tendency of, if can be judged from translations of isolated passages.* A Court cannot be invited to form an opinion as to the true tendency of books from translations of isolated passages: books must be judged as a whole. PULIN BEHARY DAS *v.* KING-EMPEROR (1911) . . 16 C. W. N 1105

BOUGHT AND SOLD NOTES.

See STAMP DUTY.

I. L. R. 39 Calc. 669

BREACH OF THE PEACE.

———— likelihood of—

See DISPUTE CONCERNING LAND.

I. L. R. 39 Calc. 150

BUILDING.

See DISTRICT MUNICIPAL ACT (BOMBAY).

I. L. R. 36 Bom. 61

BUILDING—*concld.*

———— "*Re-erection*"—*Renewing or repairing a roof replaced on its former site—Reconstruction not exceeding one-half its cubical extent—*"*Building,*" *whether a shed with posts and tin roof is a—Building line of a road encroachment on—Calcutta Municipal Act (Ben. III of 1899), ss. 3 (3), (39), (a), 351, 449* The removal of an old roof of a shed consisting of posts and the replacing on the same site either of a new roof or the former one after repairs, without an alteration exceeding one-half its cubical extent, is not a " re-erection " within s. 3 (*39*) (*a*) of the Calcutta Municipal Act The offence of infringing on a building line within the meaning of s. 351 is, having regard to the definition in s. 3 (*3*), the erection or re-erection of the wall of a building within that line, and not the removal of an old roof and replacing it on the same site. TRIPENDESWAR MITTER *v.* CORPORATION OF CALCUTTA (1911) **I. L. R. 39 Calc. 84**

BURDEN OF PROOF.

See AGREEMENT TO SELL.
I. L. R. 36 Bom. 446

See ONUS OF PROOF.

See CIVIL PROCEDURE CODE, 1908, O XXI, R. 23 **I. L R. 34 All. 612**

See EVIDENCE ACT (I of 1872), s. 108
I. L R. 34 All. 36

See EVIDENCE ACT (I OF 1872), s. 114
I. L. R. 34 All. 511

See HINDU LAW—JOINT FAMILY.
I. L. R. 34 All. 126, 135

See PARDA-NASHIN LADY
I. L. R. 34 All. 455

BURMESE LAW.

———— *Marriage—Mutual consent—Repute as evidence of marriage—Polygamy—Marriage with sister of living wife—Wives living in separate houses—Social status of after-married wife, evidence as to—Effect of recognition of wife—Evidence of reputation.* No ceremony of any kind is essential to a marriage among Burmese. Mutual consent is all that is required ; and in the absence of direct proof consent may be inferred from the conduct of the parties or established by reputation. In Burma polygamy is lawful, as also is marriage with the sister of a living wife, as well as with a deceased wife's sister. The title of the respondent (plaintiff) to share in the property of a deceased Burman, a twinzayo or hereditary oil-well owner, depended on proof that she was his lawful wife, as to which the Courts in Burma differed, the Appellate Court finding on the evidence that she was. At the time of the alleged marriage, the plaintiff was a widow with children, and the deceased was the husband of the defendant, her elder sister, with whom after the marriage she remained on good terms, though for convenience, both having families, they lived in separate houses, at which the husband took his meals, to a far greater extent, however, at the

BURMESE LAW—*concld.*

house of the defendant than at that of the plaintiff : *Held*, that there was abundant evidence that the plaintiff was recognised as the wife of the deceased. None of the witnesses said she occupied a dishonourable or inferior position, and it was difficult to see how there could be any question of social inferiority. The Courts regarded the evidence from different standpoints ; but whether the particular testimony on which they differed was accepted or not, there was very little contradiction in the evidence. On the whole the appellants had not made out a sufficient case for disturbing the judgment of the Judicial Commissioner. MI ME *v* MI SHWE MA (1912) . **I. L. R. 39 Calc. 492**

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CALCUTTA MUNICIPAL ACT (BENG. III OF 1899).

———— ss. 3 (*3*), (*39*) (*a*) 351, 449.
See BUILDING . **I. L R. 39 Calc. 84**

———— ss. 37, 38 ; Sch. IV, rr. 9, 10.
See MUNICIPAL ELECTION.
I. L. R. 39 Calc. 754

———— ss. 494, 574
See ADULTERATION.
I. L. R. 39 Calc. 682

———— Sch. IV, rr. 8, 9.
See MUNICIPAL ELECTION.
I L. R. 39 Calc. 598

CALCUTTA POLICE ACT (BENG. IV OF 1866 AS AMENDED BY BENG. III OF 1897).

———— s. 44
See COTTON-GAMBLING.
I. L. R. 39 Calc. 968

CAMBAY.

See PENAL CODE, ss. 34, 109, 467.
I. L. R. 36 Bom. 524

CANAL

See NORTHERN INDIA CANAL AND DRAINAGE ACT (VIII OF 1873), ss 7, 70
I. L. R. 34 All. 210

CANCELLATION.

See GIFT . . **I. L R. 39 Calc. 933**

CANTONMENT CODE OF 1836 AND 1850.

See CANTONMENT TENURE.
I. L. R. 36 Bom. 1

CANTONMENT TENURE.

———— *Cantonment Code of 1836 and 1850—Ownership of land in Poona Cantonment—Suit by Government for ejectment of tenant from premises within Cantonment limits—Private*

CANTONMENT TENURE—*contd.*

ownership in Cantonment, claim to—Presumption of ownership—Possession, effect of—Right of Government to resume land. In a suit for ejectment of the appellants from premises within the limits of the Poona Cantonment, the Government as plaintiffs claimed that the land belonged to them, and was merely held by the defendants on military or cantonment tenure which entitled them to resume it at their pleasure subject to compensation for buildings which the tenants might have erected thereon. The defendants claimed the land as their private property on the ground that their predecessors in title were owners of the land at the time the cantonment was established, and that nothing had happened since to vest the title in the Government; and while admitting that they were subject to military jurisdiction, and to the Government right of appropriation, contended that they were entitled to compensation on a basis of private ownership, and not as mere licensees. They also contended that being in actual possession of the land the onus was on the plaintiffs to rebut the presumption of ownership in fee attaching to the possession of land whether in a cantonment or elsewhere. The title of the defendants was based on a document dated 27th August 1864 by which one Beyts, a Purser in the Indian Navy, certificated that for the consideration therein mentioned he "handed over to Dorabjee Pestonjee all claim he had to the house, outhouses and premises generally, marked 23 Staff Lines, Poona Cantonment." This document was endorsed as "sanctioned" by the Brigadier-General Commanding. *Held*, on a consideration of the mode of delimitation of the Poona Cantonment, the regulations affecting it, the arrangements made with the owners of the lands taken to indemnify them for the loss they sustained by being deprived of their rights of occupancy, and the other circumstances of the case, (i) that even if the defendants established that their house was built at or before, the time the cantonment was made, there was still a strong probability that they were duly compensated for the change in their position as owners to that of licensees; (ii) that from the regulations as summarised in Aitchison's Cantonment Code of 1836 and Jameson's Cantonment Code of 1850, it was clear that, though permission to occupy ground was frequently given, especially for the building of officer's houses or bungalows, such permission carried with it no sort of proprietary right, and the buildings were liable to expropriation at a price to be fixed by the authorities, and the permission of the Commanding Officer was necessary even for the letting or sale of the house so built. It was therefore impossible to say that mere possession or occupation of the bungalow on this site afforded any presumption whatever that the defendants or their predecessors in title were owners in fee. The presumption was all the other way, and was strengthened by an examination of the history of the site itself which showed that the defendants, predecessors in title did not regard the property as differing in its tenure and terms from other property in the cantonment. The defendants were, therefore, mere licensees and the land had been lawfully resumed by Government. KAIKHUSRU ADERJI *v.* SECRETARY OF STATE FOR INDIA (1911).
I. L. R. 36 Bom. 1

CANTONMENT TENURE—*concld.*

CARRIERS.

——— *Railway Company—Delivery of goods—"Clear receipt" by consignee—Loss of goods—Liability of Company for the loss.* Certain bales of cloth tendered to the East Indian Railway Company for transit were in due course delivered to the consignee, who granted "clear receipt" for them. Subsequently, the consignee discovered that some pieces of cloth out of the bales were missing, the same having been lost while in the custody of the Railway Company. In a suit brought by the consignee for compensation: *Held*, that the grant of "clear receipt" and acceptance of delivery do not affect the right to compensation for loss or damage proved to have been caused to the goods while in the custody of the carriers. *Per* MOOKERJEE, *J.* A receipt acknowledging a delivery of the goods in good condition is only *primâ facie* evidence of the fact, and raises a presumption in favour of the carriers, which may be rebutted by the consignee. *Per* CARNDUFF, *J.* A bailer who, in the absence of any agreement on the subject, has given the bailee a receipt for the goods bailed, is not, *ipso facto*, precluded from proving that the goods were in reality damaged or deficient in quantity when delivered to him. EAST INDIAN RAILWAY COMPANY *v.* SISPAL LAL (1911)
I. L. R. 39 Calc. 511

CATTLE.

See RAILWAYS ACT (IX OF 1890), S 125.
I. L. R. 34 All. 91

CATTLE TRESPASS ACTS (III OF 1857 AND I OF 1871)

See ACT OF STATE
I. L. R. 39 Calc. 615

CAUSE OF ACTION.

See CIVIL PROCEDURE CODE, 1882, S 43.
I. L. R. 34 All. 172

See CONTRACT . I. L. R. 34 All. 429

See EVIDENCE ACT (I of 1872), S 91.
I. L. R. 34 All. 153

CAUSING DEATH BY RASH OR NEGLIGENT ACT.

——— *Administering of a love-potion without knowledge of, or inquiry into its actual contents—Penal Code (Act XLV of 1860), s. 304A—Statement by accused, when the only evidence in the case, and relied on by the prosecution—Evidentiary value of such statement.* If a person intentionally commits an offence, and consequences beyond his immediate purposes result, the result is not to be attributed to mere rashness: if knowledge cannot be imputed, still the wilful offence does not take the character of rashness because its consequences have been unfortunate, but acts

CAUSING DEATH BY RASH OR NEGLIGENT ACT—*concld.*

probably or possibly involving danger to others, which in themselves are not offences, may be offences within section 304A and kindred sections if done without due care to guard against dangerous consequences. *Reg.* v. *Nidamarti Nagabhushanam, 7 Mad. H. C. 119, Empress* v. *Ketabdi Mundul, I. L. R. 4 Calc. 764,* followed. Where the only evidence of an offence is a statement by the accused, and it is relied on by the prosecution as evidence thereof, it must be taken as a whole, and nothing can be read into it which is not contained therein. PIKA BEWA *v.* EMPEROR (1912).
I. L. R 39 Calc. 855

CENTRAL PROVINCES LAND REVENUE ACT (XVIII OF 1881).

See ACT OF STATE. I. L. R. 39 Calc. 615

CEREMONIES OF ASSERTION.

——— power to perform—

See MAHOMEDAN LAW—PRE-EMPTION.
I. L. R. 39 Calc. 915

CEREMONY.

See BURMESE LAW—MARRIAGE.
I. L. R. 39 Calc. 492

CESS.

See JURISDICTION . . .
I. L. R. 34 All. 358

CHARGE.

See COMPANY .I. L. R. 36 Bom. 564
See RIOTING .I. L. R. 39 Calc. 781
See SUMMARY TRIAL 16 C. W. N. 696

——— cancellation of—

See JURISDICTION OF MAGISTRATE.
I. L. R. 39 Calc. 885

——— *Misjoinder—Inherent power of Criminal Courts.* Per *Mookerjee, J.*—Criminal Courts have, equally with Civil Courts, inherent power to mould their procedure, subject to statutory provisions, to enable them to discharge their functions as Courts of justice. A Criminal Court has power to permit the prosecution to withdraw charges the joinder of which is objected to as illegal. PULIN BIHARI DAS *v.* KING-EMPEROR (1911).
16 C. W. N. 1105

CHARTER ACT, 1865.

——— s. 15.

See PRESIDENCY MAGISTRATES' COURTS.
I. L. R. 35 Mad. 739

See LETTERS PATENT, HIGH COURTS.

CHEATING.

See EVIDENCE (I of 1872), ss. 14, 15.
I. L. R. 34 All. 93

CHEQUE.

See BANKER AND CUSTOMER.
I. L. R. 36 Bom. 455

CHOTA NAGPUR LANDLORD AND TENANT PROCEDURE ACT (BENG. I OF 1879).

——— s. 123—*Rent decree, execution—Exemption of portion of tenure from sale by Commissioner—Remaining portion if may be sold as in execution of rent-decree—Rent Recovery Act (VIII of 1865), s. 16* Where the Commissioner exempted certain portions of a tenure from sale in execution of the landlords' decree for rent, under s.123 of the Chota Nagpur Landlord and Tenant Procedure Act (Beng. I of 1879), the decree-holder would be entitled to execute his entire decree as a decree for rent against the unexempted portion of the tenure and the auction-purchaser would acquire the status of a purchaser under s. 16 of the Bengal Rent Recovery Act of 1865. *Quære*: Whether there would be an apportionment of the tenure and of the rent, in consequence of such a sale, between the holders of the exempted portion and the purchaser of the unexempted portion. MADAN MOHAN NATH SAHI *v* PROTAP UDAI NATH SAHI (1912)
16 C. W. N. 1024

CHOTA NAGPUR TENANCY ACT (BENG. VI OF 1908).

——— s. 87—Whether a *jaigirdari* tenure is of a hereditary nature or one for life is a matter which a settlement officer is competent to decide under s. 87 of the Chota Nagpur Tenancy Act. RAGHUBUR SAHI *v.* PRATAP UDOY NATH SAHI DEO (1911) . . . 16 C. W. N. 294
I. L. R. 39 Calc. 241

——— ss. 87, 224, 264—

See SECOND APPEAL.
I. L. R. 39 Calc. 241

——— s. 178 cls. (*2*), (*3*)—

See SINNAMAN SINGH *v.* SHAM CHARAN OHDAR . . 16 C. W. N. 1090

CHRISTIAN MARRIAGE ACT (XV OF 1872).

——— ss. 41 and 46—*Marriage between a Christian and a Jewess divorced according to Jewish Law—Registrar refusing to take any steps—Direction from Court to solemnize marriage.* Where a Jewess was divorced according to Jewish law, a Christian desiring to marry her gave notice to the Registrar under the provisions of Act XV of 1872. The Registrar having refused to solemnize the marriage, the Court, on application, ordered the Registrar to receive and publish the notice and, upon compliance with the provisions of s. 41 of the Act, take all such steps as are necessary for the solemnization of the marriage. *In re,* HAROLD TUCKER (1912) . . 16 C. W. N. 417

CIVIL COURT.

See HEREDITARY OFFICES ACT (BOMBAY), S. 67 . I. L. R. 36 Bom. 420

CIVIL AND REVENUE COURTS.

See JURISDICTION I. L. R. 34 All. 358

CIVIL COURTS ACT (XII OF 1887).

See BENGAL, NORTH-WESTERN PROVINCES AND ASSAM CIVIL COURTS ACT, 1887.

——— ss. 21, 22.

See SANCTION FOR PROSECUTION.
I. L. R. 39 Calc. 774.

——— s. 22 (2)—*Criminal Procedure Code (Act V of 1898), s. 195, sub-ss (6) and (7)—Application to District Judge to revoke sanction to prosecute granted by Munsif—Transfer to Subordinate Judge, if valid.* An application under sub-s. (6) of s. 195, Criminal Procedure Code, is not an appeal within the meaning of sub-s. (2) of s. 22 of the Bengal Civil Courts Act. An application made to a District Judge for the revocation of a sanction to prosecute granted by a Munsif cannot therefore be transferred by him for disposal to a Subordinate Judge. HARI MANDAL *v* KESHAB CHANDRA MANNA (1912) . . . 16 C. W. N. 903

CIVIL PROCEDURE CODE (ACT VIII OF 1859).

——— s. 246—*Judgment-debtor not served with notice not necessarily a party to an investigation under—Scope of s. 246—Ss 278 to 282 of Act X of 1877 and Act XIV of 1882 (Civil Procedure Code) discussed.* A judgment-debtor upon whom notice has not been served cannot be regarded as necessarily a party to an investigation under s. 246 of the Code of Civil Procedure (Act VIII of 1859). A comparison of s. 246 of Act VIII of 1859 with ss. 278 to 282 of Acts X of 1877 and XIV of 1882 clearly lead to the conclusion that under s. 246 of Act VIII of 1859 the Court could only make an order releasing the property from attachment or disallow the claim which must be one objecting to the sale of the property in execution. KUNYIL KANARAN *v* VARANAKOT GANAPATHI (1911).
I. L. R. 35 Mad. 168

CIVIL PROCEDURE CODE (ACT XIV OF 1882).

——— s 13.

1. ——— *Res judicata—Maintenance successive suit for—Brittipatra, held not binding in previous suit—Claim based on same document in later suit, if maintainable* Where a previous suit of the plaintiff for recovery of maintenance alleged to have been charged on property in the hands of the defendants by a *brittipatra* was dismissed upon the finding that the document had as between the parties no effectual binding power over the estate and did not affect it in any way, a second suit by the plaintiff for a declaration of his right to receive maintenance under the *brittipatra* and of the same being a charge on the property and for recovery of arrears of maintenance was barred by the rule of *res judicata*. DURGA PRASAD LAHIRI CHOWDHURI *v.* SASHIBALA DEBI (1911) . 16 C. W. N. 603

2. ——— Where in a previous suit the Court held that the rent was liable to enhancement but dismissed the suit on the ground that the rent paid by the defendants was not lower than the rate at which rent was paid by tenants of adjoining lands: *Held*, that the decision that the suit was not maintainable was not *res judicata*. PARBATTY DEBYA *v.* MATHURA NATH BANERJEE (1912).
16 C. W. N. 877

3 ——— *Decree, if may be set aside as fraudulent, on proof that if it was based on perjured evidence—Res judicata, bar of—Review of judgment upon newly discovered evidence showing previous evidence perjured.* A decree obtained in a suit cannot be set aside in a subsequent action brought for that purpose on mere proof that the previous decree was obtained by perjured evidence. If evidence not originally available comes to the knowledge of a litigant and he can show thereby that evidence on which a decree against him was obtained was perjured, his remedy lies in seeking a review of judgment. But the rule of *res judicata* prevents him from re-agitating the matter on the same materials, or on materials which might have been laid before the Court in the first instance. *Abdul Huq* v. *Abdul Hafez, 14 C. W. N. 695*, followed. *Lakhmi Charan Saha v. Nur Ali, I.L. R 38 Calc. 936 : s. c 15 C. W. N. 1010, Venkatappa Naick v. Subba Naick, I. L R. 29 Mad. 179*, dissented from. *Flower v. Lloyd, L. R. 10 Ch. D. 327, Patch v Ward, 3. Ch. App. 203, Baker v. Wordsworth, 67 L. J. R. Q B. D. 301*, relied on. *Abouloff* v. *Openheimer, L. R. 10 Q. B. D. 295, Vadala* v. *Lawes, L. R. 25 Q. B. D 310, Priestman* v. *Thomas, 9 P. D. 210, Cole v Langford, [1898] 2 Q. B. 36*, referred to. MOSUFUL HUQ *v.* SURENDRA NATH RAY (1912)
16 C W. N. 1002

——— s. 13 expl. (2).

See MORTGAGE. I. L. R. 39 Calc. 527

——— ss. 13, 206.

See DECREE, AMENDMENT OF
I. L. R. 39 Calc. 265

——— ss. 13, 462—*Res judicata—Consent decree—Lands—Tenants-in-common paying land revenue jointly to Government—Lands do not thereby become impartible—Compromise—Minor—Sanction of Court.* A suit for the partition of a village was resisted on the plea that the village was impartible, *first*, because the arrangement with Government had all along been that the tenants-in-common should be jointly responsible to Government for the land revenue, and, *secondly*, because in a previous suit between the parties it was held that the lands in the village were not divisible, only the profits thereof were. The previous suit was decided in terms of a compromise. A minor was a party to it. The guardian of the minor had applied to the Court stating that he had no objection to keep all the lands joint provided the minor got his share of the profits; and the Court had made the endorsement that the application had been allowed and filed in the suit: *Held*, overruling the plea, that the arrangement settling the relations between

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*contd.*

——— **ss. 13, 462**—*concld.*

Government and the tenants-in-common could not be regarded as determination of the relations between the tenants *inter se*. *Held*, further, that the decision in the previous suit was passed in the terms of a compromise, but there was no issue raised and no adjudication on the issue whether the village was impartible. *Held*, also, that the Court's sanction had not been obtained under s. 462 of the Civil Procedure Code (Act XIV of 1882), to the compromise to which a minor was a party. The mere fact that the parties settled among themselves by compromise that the lands should not be divided, but that they should enjoy the profits, could not in law impart the character of impartibility to the estate. Impartibility must arise out of some special tenure or by some general, family or local custom. Parties cannot make an estate impartible which is partible It is opposed to public policy *Vinayak Waman Joshi Rayarikar v Gopal Hari Joshi Rayarikar*, *L. R 30 I. A. 77*, followed PIROJSHAH BHIKAJI *v* MANIBHAI NICHHABHAI (1911). . **I. L. R. 36 Bom. 53**

——— **s. 28**—*Test for misjoinder—No misjoinder where claims against several defendants in respect of some matter—Limitation Act, Sch. II, Art. 62——Suit to recover purchase—Money where sale ab initio void governed by Art 62.* A suit to recover the consideration paid for a sale, which is *ab initio* void is governed by Article 62 of Schedule II of the Limitation Act and must be brought within 3 years from the date when the purchase-money was paid. *Hanuman Kamat* v. *Hanuman Mandur*, *I. L. R 19 Calc. 123*, followed. *Krishnan Nambiar* v *Kannan*, *I. L. R. 21 Mad. 8*, not followed *A* purchased some land from *B* and paid the purchase-money. On proceeding to take possession, he was obstructed by *C* and he got a sale-deed from *C*, paying consideration for the sale. When the second sale was concluded, *D* undertook to get back the purchase-money from *B*, which was not done. *A* who had paid the purchase-money twice brought a suit against *B*, *C*, and *D* to recover from *B* the amount paid to him, if he should be found not to be the owner or in the alternative, if he should be the true owner, to recover from *C* and *D* the amount paid for the second sale: *Held*, that the suit was not bad for misjoinder. S. 28 of the Civil Procedure Code authorises the joinder in one suit of several defendants where the relief claimed is sought in the same matter, although the causes of action against them may be different. *Aiyathurai Rowthen* v. *Santem Meera Rowthen*, *I. L. R. 31 Mad. 252*, followed. KOVVURI BASIVI REDDI *v.* TALLAPRAGADA NAGAMMA (1910)

I. L. R. 35 Mad. 39

——— **s. 43**—*Suit for injunction—Suit dismissed upon the ground that plaintiff had failed to prove his possession—Subsequent suit for possession. Held*, that the dismissal of a suit for an injunction in respect of certain property upon the ground that the plaintiff has not proved his possession of the property in respect of which the injunction is sought is no bar to a subsequent suit for possession of the same property. The principle of the decisions in *Darbo v. Kesho Rai*, *I. L. R 2 All. 356*, *Sarsuti* v. *Kunj Behari Lall*, *I. L. R 5 All 345*, and *Mohan Lal* v. *Bilaso*, *I. L. R 14 All 512*, followed. BANDE ALI *v.* GOKUL MISIR (1911) . . **I. L. R. 34 All. 172**

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*contd.*

——— **s. 43**—*concld.*

——— **s. 149**—*Transfer of Property Act (IV of 1882), s. 59—Mortgage deed—"Attestation," meaning of—Attestation upon acknowledgment, if sufficient—Issues, framing of additional, after arguments heard and judgment reserved—Court's inherent jurisdiction—Court's duty to raise issue necessary for determining controversy.* Where in a suit to enforce a mortgage, after arguments had been heard and judgment reserved, it appeared from the evidence of the witnesses of the mortgage deed that they were not present at the execution but had put their names on the document of the acknowledgment of the mortgagors, and the Court framed a supplemental issue as to whether the deed had been properly attested: *Held*, that the Court was empowered to frame and try the additional issue under s. 149 of the Civil Procedure Code of 1882. *Held*, further, that apart from that section, every Court trying civil causes has inherent jurisdiction to take cognizance of questions which cut at the root of the subject-matter of controversy between the parties. Whilst the first part of s 149 of Act XIV of 1882 leaves it in the discretion of the Court to frame such additional issues as it thinks fit, the latter part makes it imperative on the judge to frame such additional issues as may be necessary to determine the controversy between the parties. SHAMU PATTER *v.* ABDUL KADIR RAVUTHAN (1912) . . **16 C W. N. 1009**

——— **ss. 210, 257A, 525, 526**—*Arbitration, reference to, by executing Court—Award modifying decree for money—Instalment decree upon award, if ultra vires—Waiver of irregularity.* Upon an application for execution of a decree for money, the judgment-debtors having raised objections, the dispute was referred by the executing Court to an arbitrator before whom the judgment-debtor withdrew his objections and the decree-holder consented to have the decretal amount paid in certain instalments. The arbitrator purported to embody these terms in an award and the Court subsequently passed a modified decree in terms thereof. The decree-holder having applied for execution of this decree more than 12 years after the original decree was passed in his favour, the judgment-debtor objected, *inter alia*, that the application was time-barred, that the agreement embodied in the award and the decree based thereon were void under s. 257 A, and that this decree was not in compliance with s. 210 of the Code and was otherwise *ultra vires* of the executing Court. *Held*, PER CHATTERJEE, *J.*, agreeing with TEUNON, *J.* (COXE, *J.*, *contra*), that assuming that the proceeding refer-

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*contd.*

——— **ss. 210, 257A, 525, 526**—*concld.*

ring the matter to arbitration was altogether null and *ultra vires*, the arbitration might be treated as a private arbitration, so that the award would be one under s. 525 and the decree under s. 526 which it was not open to the parties to challenge or dispute. *Per* CHATTERJEE, *J.*, that executing Court had inherent jurisdiction over the subject-matter of the dispute and any irregularities in the procedure leading to the decree having been waived, the party waiving such irregularities cannot be allowed to deny its validity. NAGENDRA CHANDRA BANERJEE *v.* HARENDRA NATH MUKHERJEE (1911). **16 C. W. N. 34**

——— **s 230**—

1. ——— *Execution of decree —Limitation—Application for transfer of decree—Subsequent application for execution not in continuation of application for transfer. Held,* that an application for execution can in no sense of the words be regarded as an application in continuation of an application for transfer of a decree from one Court to another. In order that an application may be a continuation of another application, it is necessary that the two applications must be of the same nature, and the application for transfer being an application of an entirely different nature from that for execution of a decree does not suspend the operation of s. 230 of the Code of Civil Procedure, 1882. *Sundar Singh* v. *Doru Shankar, I. L. R. 20 All. 78,* applied. *Ram Sahai* v. *Nanni, All. Weekly Notes, 1886, p 137,* dissented from. KHETPAL *v.* TIKAM SINGH (1912) . **I. L. R. 34 All. 396**

2. ——— *Execution of decree —Decree upon compromise against lessees, and on their failure to pay against the property of their surety —Execution against lessees after the lapse of twelve years.* A decree for rent was passed upon a compromise against certain lessees and their surety. The decree provided that the amount of it should be realized in the first instance from the lessees by annual instalments and in the event of failure it would be recoverable by the sale of certain immovable property which the surety had hypothecated. The decree was put into execution against the lessees as a simple money decree more than 12 years after the date of its passing: *Held,* that s. 230 of the Code of Civil Procedure of 1882 applied and the decree could not be executed after the expiration of 12 years from the date thereof. *Pahalwan Singh v. Narain Das. I. L. R. 22 All 401,* distinguished. MAHARAJA OF BENARES *v.* LALJI SINGH . . . **I. L. R. 34 All. 636**

——— **s. 232**—*Mortgage decree assignment to one of several judgment-debtors—Execution by assignee, if lies—Discharge of debt by one judgment-debtor —Right if only to contribution.* The expression "a decree for money against several persons" in s. 232 of the Civil Procedure Code of 1882 means a personal decree for payment of money against two or more defendants jointly. A mortgage decree even though it may direct the judgment-debtor to pay

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*contd.*

——— **s. 232**—*concld.*

the decretal amount, is not a "decree for money" within the meaning of that section, and one of the judgment-debtors having obtained an assignment of such a decree may proceed to execute the decree by putting the mortgaged property to sale. Where, however, one of the judgment-debtors had paid off the decree before taking an assignment, although the payments were not certified, there was nothing to pass under the assignment, and the only remedy of the judgment-debtor against his co-judgment-debtor was by a suit for contribution. LALDHARI SINGH *v.* MANAGER, COURT OF WARDS, BHAPATPURA ESTATE (1911) . . **16 C. W N. 132**

——— **ss. 244, 278**—

See EXECUTION OF DECREE.
I. L. R. 39 Calc. 298

——— **ss. 263, 264, 318, 319**—*Civil Procedure Code (Act V of 1908), O XXI, r. 5 (2)—Court-sale—Symbolical possession by purchaser—Judgment-debtor remaining in actual possession—Limitation.* Merely formal possession of immovable property by a purchaser at a Court-sale cannot prevent limitation running in favour of the judgment-debtor where the latter remains in actual possession and the property is not in the occupancy of a tenant or other person entitled to occupy the same. Symbolical possession is not real possession nor is it equivalent to real possession under Civil Procedure Code except where the Code expressly or by implication provides that it shall have that effect *Gopal* v. *Krishna Rao, I. L R 25 Bom 275,* and *Mahadeo v Parashram Bhawan Chand, I. L. R 25 Bom. 358,* overruled. MAHADEV SAKHARAM *v* JANU NAMJI HATLE . . . **I. L. R. 36 Bom. 373**

——— **s. 273**—*Where decree attached, the decree-holder cannot take any steps to execute the decree.* S. 273 of the Code of Civil Procedure prohibits the holder of a decree which has been attached in execution from applying for execution of the decree attached and any such application by him will be infructuous as it could not be granted and will not have the effect of saving limitation. The only person competent to execute will be the attaching creditor, who will be liable in damages if he allows the decree to become barred by limitation *Adhar Chandra Dass* v. *Lal Mohan Dass, I. L R 24 Calc 778,* not followed. UNNI KOYA *v* UMMA (1912) . . **I. L. R. 35 Mad. 622**

——— **ss. 278, 279, 280, 281**—*Execution of decree—Attachment—Objection to attachment—Objection dismissed—Suit to recover possession—Jurisdiction. Held,* on a construction of ss 278, 279, 280 and 281 of the Code of Civil Procedure, 1882, that an objector may raise an objection to an attachment not only on the gound that he is in possession of the property attached but also on the ground that he has an interest in it, and that, when an executing Court disallows the claims of an objector under s. 281, the Court has jurisdiction to

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*contd*

——— **ss. 278, 279, 280, 281**—*concld.*

do so, notwithstanding the fact that it erroneously does not go into the question of possession but disallows the objection on some other ground. BHAGWAN DAS, *v.* RAJ NATH (1912).
I. L. R. 34 All. 365

——— **ss. 278, 279, 281, 282, 283.**— *Bar under s. 283, applies to parties to proceedings though subsequent to the order they become representatives of judgment-debtor—Orders under ss. 280, 281, 282 may deal with questions of titles.* Parties to proceedings under s. 278 of the Civil Procedure Code of 1882 and persons claiming through them who would be estopped by orders passed under ss. 280—282 do not cease to be parties to such proceedings and to be so estopped because subsequent to such order they acquire rights which enable them to stand in the shoes of the judgment-debtor. Orders under ss. 280, 281 and 282 may determine questions of title. The power of the Courts in passing such orders is not confined to determining which of the parties is in possession. RAMU AIYAR *v.* PALANIAPPA CHETTY (1910) . . **I. L. R. 35 Mad. 35**

——— **s. 283**—*Civil Procedure Code (Act XIV of 1882), ss. 278. 283—Suit by defeated claimant who had purchased property attached pending creditor's suit—Plea in defence that transfer fraudulent, if competent—Creditor if may act for himself—Transfer of Property Act (IV of 1882), s 53—Property of greater value than debt—Relief, form of.* Where in a proceeding under s. 278, Civil Procedure Code, the Court held that the judgment-debtor and not the claimant was in possession: *Held*, that a suit by the claimant under s.283, Civil Procedure Code, should be decreed if it is found in that suit that the claimant was in possession after a purchase for valuable consideration—unless there is anything in the pleadings outside the scope of s. 283, Civil Procedure Code, to restrain or restrict such a result. It is competent to the defendant in such a suit to set up the defence that the transfer to the plaintiff was with intent to defraud him so in effect was not binding as against him. *Clough* v. *London and North-Western Railway Co, L. R 7 Exch 26, The Eastern Mortgage and Agency Co.* v. *Rebati Kumar Ray, 3 C. L. J. 260,* referred to. A creditor who has already recovered judgment on his debt is entitled to show that a transfer by the debtor was void as against his own claim; he is not bound to act on behalf of all the creditors. *Smith* v. *Hurst, 10 Hare 30, 39, Spirett* v. *Willows, 11 Jour. N. S. 70, Blenkinsopp* v. *Blenkinsopp, 1 DeG. M & G. 495,* referred to. When the property transferred is larger than what would satisfy the creditor's demand, the latter cannot complain if his right to avoid the transfer is confined to that part of the property or if the transferee be made to satisfy his demand. The title of the plaintiff in the property purchased by him was declared subject to a direction that he should pay the amount of the defendant's decree within a period specified, failing which the property was to be sold and the surplus left after paying off the defendants paid to the plaintiff. ABDUL KADER *v.* ALI MIA (1912).
16 C. W. N. 717

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*contd*

——— **s. 283**—*concld*

——— **ss. 287, 291**—

See SALE IN EXECUTION OF DECREE.
I. L. R. 39 Calc. 26

——— **ss. 287, 293**—*Execution of decree—Attachment of a house—Proclamation of sale—Auction sale—Default in payment of price by auction purchaser—Proclamation of re-sale—Errors in the proclamation of re-sale—Application by plaintiff's widow to recover from the defaulting purchaser the deficiency of price in the re-sale—Liability creature of statute relating to procedure—At the re-sale statute not complied with.* One Shivlal brought a suit against Bai Samrath. The suit was dismissed and a decree for defendant's cost, namely Rs. 96-2-10, was passed against the plaintiff. The defendant sold the decree to one Nathu, who, in execution attached Shivlal's house. A proclamation of sale was published and at the auction sale one Gangadas Dayabhai purchased the house for Rs. 1,325 and deposited one-fourth of the purchase-money. The purchaser, however, made a default in the payment of the balance in time and the house was again put up to sale. A second proclamation of sale was issued, but the descriptions contained in this proclamation were discrepant and did not tally with those in the previous one. At the re-sale only Rs. 260 were realized. Subsequently Shivlal's widow Bai Suraj having applied to recover from the defaulting purchaser the loss on the re-sale: *Held*, that the liability of the defaulting purchaser was the creature of a statute relating to procedure and that statute laid down in very clear terms that in the proclamation of sale the proclamation should specify as fairly and accurately as possible the property to be sold. The first proclamation did not state, either fairly or accurately, the property to be sold and as it was sought to fix the liability upon the appellant by reason of the words of the statute, he was entitled to appeal to the words of s. 287 of the Civil Procedure Code (Act XIV of 1882) to show that the statute had not been complied with and that it could not be said that there was a re-sale of the property which was put up in the first instance. GANGADAS DAYABHAI *v* BAI SURAJ (1911) . . . **I. L. R. 36 Bom. 329**

——— **s. 295, and O. XXI, rr. 63, 73 of the Code of 1908**—*Realisation of assets—Transfer of decree not necessary for rateable distribution of sale-proceeds of attached property—Application for rateable distribution may be made though copy of decree not received.* Where the same property is attached in execution of decrees by two Courts of different grades, the decree-holder in the inferior Court who had attached prior to realisation, may apply to the superior Court for rateable distribution of the sale-proceeds of the attached property and the transfer of his decree for execution to the

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*con'd.*

——— **s. 295**—*concld.*

superior Court is not necessary to enable him to do so. Assets are realised not when the deposit is made by the purchaser, but only when the balance of the purchase money is paid into Court An application for execution to the superior Court is an essential pre-requisite of a general claim to rateable distribution. Where the lower Court has ordered the transfer of the decree for execution to the superior Court, an application after such order to the superior Court before it has received a copy of the decree would be sufficient to satisfy the requirements of O. XXI, r 73, and to entitle the applicant to rateable distribution. ARIMUTHU CHETTI *v.* VYAPURI PANDARAM (1912).

I. L R. 35 Mad. 588

——— **s. 311.**

See PARTIES . **I. L. R. 39 Calc. 881**

——— **ss. 311, 312.**

See SECOND APPEAL

I. L R. 39 Calc. 687

——— **s. 317**—*Public Demands Recovery Act (Ben. Act I of 1895, as amended by Ben Act I of 1897), s. 19, sub-s. (2)—Suit to declare defendant's purchase of land at certificate sale benami for plaintiff if maintainable—Civil Procedure Code (XIV of 1882, s. 317), if applies.* By virtue of sub-s 2 of s. 19 of the Public Demands Recovery Act, 1896, as amended by Act I, B. C., of 1897, the provisions of s. 317 of the Civil Procedure Code of 1882 (which correspond with those of s. 66 of the Code of 1908) apply to the case of a purchaser at a sale in enforcement and execution of a certificate issued under the Public Demands Recovery Act and a suit by the plaintiff for a declaration that the defendant's purchase of certain lands in execution of such a certificate was *benami* on behalf of the plaintiff, was barred by the provisions of s. 317 of the Civil Procedure Code of 1882 *Ambika Prosad v. Gopal Buksh Das, 1 C. L. J. 550*, not followed. *Hari Charan Singh v. Chandra Kumar Dey, I. L R. 34 Calc. 187* : *s. c. 11 C W. N. 745*, followed. BANGA CHANDRA NANDI *v* TARA KINKAR PAL (1912).

16 C. W. N. 973

——— **ss. 324A, 272, 285**—*Execution of decree—Money lying with Collector—Prohibitory order upon Collector by another Court—The executing Court attaching the money in execution of another decree—Payment to the decree-holder—Remedy of the first decree-holder at whose instance prohibitory order was issued—Practice and procedure.* Ramchandra and others obtained a decree against Shambhu and another in the Court of the Subordinate Judge, Second Class, at Chalisgaon. Those decree-holders having applied for execution by attachment and sale of certain lands, the Court transferred the decree for execution to the Collector under s. 320 of the Civil Procedure Code (Act XIV of 1882) The Collector executed the decree and held the amount for payment to the decree-holders. In the meantime, the

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*contd.*

——— **ss. 324A 272, 285**—*concld.*

plaintiff obtained a decree for money against Ramchandra and others in the Court of the Subordinate Judge, First Class, at Dhulia ; and in execution of the decree obtained attachment of the amount with the Collector by means of a prohibitory order under s. 272 of the Code. About this time, the defendant obtained a decree against Ramchandra and others in the Court of the Subordinate Judge, Second Class, at Chalisgaon ; and in execution of his decree obtained an order of attachment of the said amount. In obedience to this second order the amount was remitted to the Chalisgaon Court, where it was paid to the defendant. The plaintiff sued to recover the money. The lower appellate Court applied the provisions of s. 285 and decreed the plaintiff's claim. *Held*, dismissing the plaintiff's suit, that it was governed not by the provisions of s. 285 but by those of s. 324A of the Civil Procedure Code (Act XIV of 1882). *Held*, further, that the prohibitory order passed by the Dhulia Court under the provisions of s. 272 was *ultra vires* and could not bind the Collector in view of the provisions of s. 324A under which he was acting. *Held*, also, that in virtue of s. 324A of the Civil Procedure Code (Act XIV of 1882) the Collector held the amount " at the disposal of the Court " (at Chalisgaon) which had transferred to him the decree for execution and which was bound to dispose of the amount in the manner and for the purposes mentioned in the third paragraph of that section ; that it was open to the plaintiff to apply to the Court at Chalisgaon through the Court at Dhulia for rateable distribution under s. 295 ; and that according to the provisions of s. 324A, the Collector owed a special duty to the Chalisgaon Court and that Court alone had jurisdiction to deal with all questions as to the disposal of the amount. GOVINDJI VIRAMJI *v.* SAKHARAM GOVINDA (1911)

I. L. R. 36 Bom. 519

——— **s. 325A**—*Transfer of Property Act (IV of 1882), s. 43—Specific Relief Act (I of 1877), s 18—Attachment of lands—Transfer of execution proceedings to Collector—Letting out by Collector—Cesser of Collector's powers—Sale by the owner of his interest—Sale effective in favour of the purchaser.* The plaintiff was a creditor of the family of the defendants The plaintiff's separated brother was also a creditor. The plaintiff's brother attached the family lands. The matter went in execution to the Collector who leased the lands to one Piraji Subsequently the plaintiff and the defendants came to an understanding by which the plaintiff agreed to remit his mortgage debt and pay off his brother—the judgment-creditor—and the defendants agreed to sell him one of the lands. The plaintiff then obtained possession of the family lands from which he was ejected by the defendants. Thereupon, the plaintiff having brought a suit to recover possession. *Held*, allowing the claim, that the interest which the sale-deed purported to transfer to the plaintiff was the interest which the defend-

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*contd.*

——— s. 235A—*concld.*

ants had in the lands at the time of the transfer, and the Collector's powers having ceased by reason of the proceedings in attachment being closed, the conveyance of the defendant's interest to the plaintiff took effect in his favour. *Gangabai* v. *Baswant, I L. R. 34 Bom. 175* and *Udey Kunwar v Ladu, 6 B. L. R. 283*, distinguished. MAGNIRAM VITHURAM *v.* BAKUBAI (1912).

I. L. R. 36 Bom. 510

——— s. 332—*Delivery of possession to decree-holder—Proceeding under s 332, decision under, against decree-holder—Limitation—Act (XV of 1877), Sch. II, Arts 11, 13, 120, 142.* Where in execution of a decree for possession the plaintiffs were put in possession of immovable property and were then dispossessed by reason of a proceeding under s. 332 of the Civil Procedure Code being decided against them: *Held*, that a subsequent suit by the plaintiffs to recover possession was governed by Art. 142 of Sch. II of the Limitation Act, and not by Arts. 11, 13, or 120 thereof. *Ayyasami* v. *Samiya, I. L R. 8 Mad. 82*, approved. MAINDI SARDAR *v.* GORA CHAND GHOSH (1912).

16 C. W. N. 971

——— s 411—*Suit for dower in formâ pauperis by wife against her husband and his mortgagee—Suit pending execution of decree for sale upon mortgage—Decree dismissing suit against mortgagees and making husband solely liable—Execution of decree to recover court-fees due to Government—Effect of sale of mortgaged property.* The respondents obtained a decree for sale on their mortgage on the 17th of December 1895. Pending execution the wife of the mortgagor brought a suit *in formâ pauperis* against her husband and his mortgagees for dower, alleging that it was a charge on the mortgaged property in priority to the mortgage lien. It was found that the dower debt was not charged on the property, and on the 11th of May, 1897, her suit was dismissed as against the mortgagees, and a money decree passed against her husband alone: and under s. 411 of the Civil Procedure Code, XIV of 1882, the amount of the court-fees due to Government was made a first charge on the amount decreed. Notwithstanding that the decree expressly dismissed the suit as against the mortgaged property, the Collector, in order to recover the court-fees in the pauper suit brought it to sale, on the 22nd of July 1899, in execution of the decree of the 11th of May 1897, and recovered just enough to satisfy them. On the application of the respondents the Civil Court directed that the property should be again put up for sale in execution of the respondent's decree of the 17th of December 1895, and on the 20th of September 1902, it was purchased at that sale by the respondents who got formal possession. The purchaser under the decree of the 11th of May 1897, now represented by the appellants, had, however, then obtained possession, and there was a contest for mutation of names which resulted in the revenue Courts upholding the right of priority of the

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*contd.*

——— s. 411—*concld.*

Government for the court-fees and the possession of the appellants. *Held*, in a suit in the Civil Court by the respondents to enforce their priority and for possession, that they were entitled to succeed. The decree of the 11th of May, 1897, did not create, nor purport to create any charge on the mortgaged property; and the sale under it of the 22nd of July, 1899, being a sale of the property of the defendant in the suit for dower to satisfy a debt of the plaintiff in that suit, was without jurisdiction, and passed no title to the purchaser. RAGHO PRASAD *v* MEWA LAL (1912).

I. L. R. 34 All. 223

——— s. 413—*Application to sue in formâ pauperis, dismissed—Petition if may be treated as plaint on payment of proper court-fees—Costs of Government, payment of, if condition precedent to action—Dismissal of suit when no demand made for payment if proper. Held* (without deciding any question of limitation), that there can be no objection to a petition to sue *in formâ pauperis*, which has not been granted, being registered as the plaint in the suit on the full fees being paid. Although s. 413 of the Civil Procedure Code makes it a condition precedent to the institution of a suit in the ordinary way by a person whose application to sue *in formâ pauperis* has been rejected, that he should first pay the costs incurred by the Government in opposing the application, the suit ought not be dismissed for non-payment of such costs when no demand for its payment was made at any time either on behalf of Government or by Court. The lower Court having dismissed the suit on that ground the plaintiff on appeal was allowed to pay the amount and the suit was remanded for trial on the merits. MRINALINI DEBI *v* TINKAURI DEBI (1912) . . . . **16 C. W. N. 641**

——— s. 503—*Receiver appointed under section, powers of—Cannot recover from third parties whose rights date prior to his appointment.* A receiver appointed under s. 503 of the Code of Civil Procedure in respect of any movable or immovable property is entitled to take possession of it from the parties to the suit to manage it, etc. He is not entitled to recover possession from a third party a stranger to the suit whose rights date prior to his appointment. Such a receiver has no right to recover property sold before his appointment by the judgment-debtor on the ground that the sale is voidable as against the creditors on the principle embodied in s. 53 of the Transfer of Property Act. MAHAMED KASIM SAHIB *v.* PANCHAPAKESA CHETTI (1912) . . . . **I. L. R. 35 Mad. 578**

——— s. 525—*Arbitration—Award going beyond terms of reference, if valid—Party benefited if may repudiate award. Acceptance of award in part, if permissible.* The plaintiff's right of passage along a pathway across the defendant's land being disputed by the latter, the question of its existence was referred to an arbitrator who found that the pathway did in fact exist as alleged,

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*contd.*

——— s. 525—*concld.*

but he laid out a new pathway in lieu of it, holding that if the thoroughfare was allowed to continue great inconvenience would be caused to the defendant: *Held*, that although an arbitrator is allowed greater latitude than Courts of law in departing from rules of practice which Courts have adopted for general convenience, and an arbitrator's award is not open to review on the merits upon grounds of error of law as well as of facts, an arbitrator cannot go beyond the precise questions submitted. But even though the arbitrator may have exceeded his authority, it is not open to the party benefited by the award to take exception to it on that ground, and the defendant therefore was bound by the award in this case. In a proceeding under s. 525, Civil Procedure Code (Act XIV of 1882), it is not competent to the Court to direct the award to be filed in part. If the award is bad in part, the Court should refuse the application to file it altogether. NARSINGH NARAYAN SINGH *v.* AJODHYA PROSAD SINGH (1911) . . . **16 C. W. N. 256**

——— s. 539—

1. ——— *Trust for public religious purpose—Dedication of property as Shivarpana—Ejectment of trespassers from the trust property—Court—Jurisdiction—Trust created by will—Trust coming into being at a future date—Duty of heirs to carry out the trust—Hindu law—Will.* A suit to eject a trespasser from property, which is the subject of a public religious trust, does not fall within the purview of s. 539 of the Civil Procedure Code of 1882. *Lakshmandas Parashram* v. *Ganpatrao Krishna, I. L. R. 8 Bom. 365; Vishvanath Govind Deshmane* v. *Rambhat, I. L. R. 15 Bom. 148; Kazi Hassan* v. *Sagun Balkrishna, I. L. R. 24 Bom. 170; Ravichand* v. *Samal (1886) P. J. 273*, followed. Where the trustees named by the testator for the purpose of making and completing the trust at the point of time fixed by him are dead, and the object of the trust as named by him is specific and definite, the Court will take the administration of the trust. *Moggridge* v. *Thackwell, 7 Ves. Jun. 36;* and *In re Pyne. Lilley* v. *Attorney-General, [1903] 1 Ch. 83*, followed. Where a Hindu who has directed a trust of his property for a religious purpose dies before giving effect to it, the Hindu law authorises his heir to take steps for carrying out his directions after recovering the property from a trespasser. Where the testator merely directs that his property should be endowed for a certain purpose at a certain time by certain persons after his death, then until the arrival of the time and the complete dedication of it in the manner and for the object pointed out by the testator, the property must be regarded, in the eye of law, as part of his estate but impressed with a trust or an obligation on the part of those taking that estate as heirs to carry out his directions at the appointed time. He who succeeds him as heir, has the right to do what the owner himself would have done or has directed to be done so as to complete the trust with the sanction of the Court, if necessary. Before he can do that, he must first secure the property from the wrong-doer into whose possession it has passed. GHELABHAI GAVRISHANKAR *v.* UDERAM ICHARAM (1911). **I. L. R. 36 Bom. 29**

2. ——— *Trust—"Public charitable or religious purposes"—Trust for benefit chiefly of a particular sect not necessarily not a public trust.* Where it was clearly established by evidence that certain property had been held for very many generations for the purpose of supporting and maintaining *fakirs*, entertaining visitors and for the giving of alms, and there was no evidence that the property was ever held for any other purpose, it was *held* that the Court ought to presume the existence of a charitable or religious trust within the meaning of s. 539 of the Code of Civil Procedure, 1882, and the trust was none the less a trust for a public purpose if its main object was in fact the support of *fakirs* of a particular sect and the propagation of the tenets of that sect. MAHANT PURAN ATAL *v.* DARSHAN DAS (1912). **I. L. R. 34 All. 468**

——— ss. 551, 577, 586.

See MORTGAGE . **I. L. R. 39 Calc. 925**

——— s. 575.

See SALE FOR ARREARS OF REVENUE. **I. L. R. 39 Calc. 353**

——— ss. 584, 585.

1. ——— *Second appeal—Finding of fact upon misconstruction of documentary evidence, if conclusive—Construction of document, question of law—Wajib-ul-arz, as evidence of proprietary right—Extension of Chaukidari Act (XX of 1858), to mouzah, if alters proprietary rights.* The right construction of documents is a question of law which Judges in second appeal are not, by ss. 584 and 585 of the Civil Procedure Code, precluded from considering by any finding of a lower Appellate Court based upon such documents. Where the Court of first appeal found on its construction of the *wajib-ul-arz* and other documentary evidence that the plaintiffs were the owners of the lands in suit, and the High Court on second appeal, on their construction of the *wajib-ul-arz* and other documents in the suit, held that the plaintiffs were not the owners. *Held*, that the Court of first appeal having misconstrued the *wajib-ul-arz*, the High Court in second appeal was not bound to accept as correct its finding based upon such misconstruction. The *wajib-ul-arz* is cogent evidence of the rights as they existed when it was made of those holding proprietary or other rights of property within the mouzah. The Government by applying the Chaukidari Act to the mouzah did not alter and could not have altered proprietary rights in the mouzah or any part

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*concld*

——— ss. 584, 585—*concld.*

thereof. FATEH CHAND *v.* KISHEN KUNWAR (1912) . . . . **16 C. W. N. 1033**

2. ——— *Second appeal—Questions of law and fact—Construction of document—Wajib-ul-arz—Land-holder and tenant—Rights of zamindars in respect of house sites and groves.* In a suit for a declaration of the proprietary title of the appellants to certain lands in a village, the first Court dismissed the suit on the ground that the respondent was the zamindar, and the appellants only tenants of the lands. The Subordinate Judge found on the construction of the *wajib-ul-arz* of the village and other documentary evidence that the appellants were the owners of the lands in suit. On second appeal to the High Court it was contended that the Court was bound under s. 584 of the Civil Procedure Code, 1882, to accept the finding of the Subordinate Judge as conclusive, the question being one of fact; but the High Court rejected that contention. *Held* (affirming that decision), that the Subordinate Judge's finding was arrived at by inferences drawn from a misconstruction of the *wajib-ul-arz*. The right construction of documents was a question of law which the Court on second appeal was not precluded from considering under ss. 584 and 585 of the Civil Procedure Code. On the true construction it was clear from the documentary evidence that the appellants were only tenants of the land, and not proprietors. FATEH CHAND *v.* KISHAN KUNWAR (1912) **I. L. R. 34 All. 579**

——— s. 596—Where a concurrent finding of fact was sought to be challenged before the Privy Council the ground that the Court of first instance had misdirected itself inasmuch as in the course of a long judgment certain materials of a most elementary character for arriving at a conclusion had not been set out in the narrative which the judgment contained: *Held*, that there was no ground for the suggestion that the Court had not taken these circumstances into account. That it would be to misconstrue entirely the provisions of s. 596 of Act XIV of 1882 as to concurrent findings of fact if the Judges of India were to have impliedly the duty laid upon them of making their narrative of the circumstances minutely and completely exhaustive under the penalty that if they failed to do so, the absence from their mind of elementary considerations might be presumed. SAJJAD HUSAIN *v.* NAWAB WAZIR ALI KHAN (1912). **16 C. W. N. 889**

CIVIL PROCEDURE CODE (ACT V OF 1908).

——— s. 2, sub.-s. (2), O. XLI, r. 17—

See DECREE . **I. L. R. 39 Calc. 341**

——— s. 11—

1. ——— *Res judicata—Suit by Mitakshara coparcener for declaration of right to a share resisted by defendant setting up*

CIVIL PROCEDURE (CODE ACT V OF 1908)—*contd*

——— s 11—*contd*

impartibility and primogeniture—Decree in plaintiff's favour if bars defendant's eldest son who was not joined in the suit from setting up same defence in subsequent suit for partition. Plaintiff sued the defendant's father and others for a declaration of his right to a certain share in certain properties which he alleged had descended to him and the defendants as ancestral property governed by the ordinary Mitakshara law. The defendant's father resisted the suit on the plea that the property had descended to him alone under a custom of primogeniture. Plaintiff obtained a decree in that suit, the plea of defendant's father regarding the custom of primogeniture being rejected. In a second suit by the plaintiff for partition of the properties, defendant who was no party in the former suit, took up the same plea of primogeniture, he being the eldest son of his father: *Held*, that the defendant was barred by the rule of *res judicata* from taking up the same defence. That under s. 11, Civil Procedure Code, what had to be considered was what the defendant himself claimed and as according to his case, he was claiming through his father he was bound by that decision; and the fact that according to the plaintiff's case the defendant as a coparcener of his father did not derive his right through his father was no answer to the plea of *res judicata*. MOWAR KALI CHURN SINGH *v* MOWAR SHEO BUKSH SINGH (1912) . . . **16 C. W. N. 783**

2. ——— *Mortgage—Prior and subsequent mortgages—Suit for sale on second mortgage, first mortgagees being made parties—Rights of first mortgagees not set up—Subsequent suit by first mortgagees barred—Res judicata* Certain puisne mortgagees brought a suit for sale on their mortgage in which, although they impleaded the prior mortgagees, they simply asked for the sale of the property mortgaged, neither claiming to have their mortgage redeemed nor asking for sale subject to the prior mortgage. The prior mortgagees on their part did not set up their rights under the prior mortgage. *Held*, that s. 11 of the Code of Civil Procedure was a bar to the prior mortgagees afterwards suing for sale on their mortgage. *Mohamed Ibrahim Hossain Khan* v. *Ambika Pershad Singh*, I L. R 39 Calc. 527, followed. *Surju Ram Marwari* v. *Barhamdeo Prasad*, *1 C. L. J. 337*, distinguished. GAJADHAR TELI *v.* BHAGWANTA (1912) . . . . **I. L. R. 34 All. 599**

3. ——— *Res judicata—Suit to recover interest on mortgage money—Award of interest on a certain principal sum—Suit for foreclosure—Finding as to principal amount in the first is not res-judicata in the second suit—Dekkhan Agriculturists' Relief Act (XVII of 1879).* In a suit brought by a mortgagee to recover interest on his mortgage money, the amount was found to be Rs. 350 and interest was awarded on that sum. The mortgagee subsequently brought another suit to foreclose

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— s. 11—*contd.*

the mortgage, under the provisions of the Dekkhan Agriculturists' Relief Act, 1879; the mortgage amount was found to be Rs. 400 and relief was accordingly granted. It was contended in appeal that the finding as to the mortgage amount in the first suit operated as *res judicata* in the second suit: *Held*, that the Dekkhan Agriculturists' Relief Act, 1879, was in relief of a certain class of His Majesty's subjects, and, therefore, the finding in the first suit could not affect and be *res judicata* in the second suit, which was of a different character given to it by a special law unless the previous suit also could fall within the class of suits to which that law applied VITHAL RAMCHANDRA *v.* SITABAI (1912) . . . I. L. R. 36 Bom. 548

4. ——— *Res judicata—Consent decree amount to res judicata—Consent decree between predecessors-in-title of parties in suit—Injunction granted in former suit—Res judicata and estoppel distinguished.* A consent decree has to all intents and purposes the same effect as *res judicata* as a decree passed *per invitum* and this notwithstanding the words in s. 11 of the Civil Procedure Code "has been heard and finally decided" *In re South American and Mexican Company, [1895] 1 Ch. 37*, followed. A consent decree come to between the predecessors-in-interst of the present parties touching matters now substantially and directly in issue between them is *res judicata*. *Res judicata* ousts the jurisdiction of the Court while estoppel does no more than shut the mouth of a party. Estoppel never means anything more than that a person shall not be allowed to say one thing at one time and the opposite of it at another time; while *res-judicata* means nothing more than that a person shall not be heard to say the same thing twice over. BHAISHANKER NANABHAI *v.* MORARJI KESHAVJI & Co. (1911) . I. L. R. 36 Bom. 283

5. ——— *Res judicata—Co-plaintiff, res judicata as between—Civil Procedure Code (Act XIV of 1882), s. 26—Joinder of parties.* The plaintiff *D* and his step-mother *R* (defendant) brought a suit against *C* to recover possession of certain ornaments which formed part of the estate of *M*, the father of *D* and husband of *R*. It was held by the Court of first instance that *R* was entitled to the ornaments, because they were her *stridhan*; but the Appellate Court held that she was entitled to them not because they were her *stridhan*, but because she was the absolute owner of the property. *D* then sued *R* for a declaration that he, as son and heir to *M*, was entitled to hold the decree. The defendant in reply contended, *inter alia*, that the suit was barred by *res judicata*: *Held*, that the bar of *res judicata* did not apply, inasmuch as there was no final adjudication as between *R* and *D*, and in the first suit it was a matter of no consequence to the defendant therein for the purposes of the relief to be given against him whether *R* succeeded or whether *D* succeeded. A finding to become *res judicata* as between co-plaintiffs must have been essential for the purpose of giving relief against the defendants. *Ramchandra Narayan* v. *Narayan Mahadev I. L. R. 11 Bom 216*, followed. The Court ought not to hold a point to be *res judicata* unless it is clear from the pleadings and the findings in the previous suit. No Court ought to infer *res judicata* by mere arguments from a judgment in a previous suit. *Attorney-General for Trinidad and Tobago* v. *Eriche, [1893] A. C. 518* followed. RUKHMINI *v.* DHONDO MAHADU (1911).

I. L. R. 36 Bom. 207

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— s. 11—*concld.*

——— s. 20—*Contract between firms at Ranchi and Cawnpore—Goods to be delivered at Ranchi—Suit for damages for breach if lies at Ranchi* Where the plaintiffs, who owned a shop at Ranchi, signed an order form supplied to them at Ranchi by the defendant Company which had its place of business at Cawnpore, requesting the Company to forward certain specified articles by goods train to their address at Ranchi (packing and freight free) and to be despatched on a specified date, and the Defendant Company agreed to do so: *Held*, that the contract was to be performed by the delivery of the goods at Ranchi and the Court at Ranchi had jurisdiction to entertain a suit by the plaintiffs for damages for breach of the contract by the defendant. A. T. BHUTTACHARYA *v.* CAWNPUR WOOLLEN MILLS Co, LD. (1911).

16 C. W. N. 325

——— s. 20(c)—*Contract Act (IX of 1872), s. 212—Principal and agent—Suit for compensation for loss caused by negligence of agent—Jurisdiction.* The plaintiffs who were grain-dealers, ordered the defendant, who was a commission agent at Karachi, to purchase some grain for them The latter did so, and the plaintiffs sent him some money on account. In accordance with the direction of the plaintiffs the railway receipt for the goods purchased was sent by value payable post. By some mischance it did not arrive. The defendant instructed the railway authorities not to deliver the goods till the balance due to him was paid. The balance was paid by the plaintiffs to the defendant's agent at Delhi. The Railway officials at Hathras refused to deliver the goods without the defendant's consent and delay occurred. In the meantime the price of the particular kind of grain fell and the speculation resulted in a loss to the plaintiffs. *Held*, on suit by the plaintiffs, for compensation instituted at Hathras, that the case was for compensation under s. 212 of the Contract Act in respect of the direct consequences of the defendant's neglect and misconduct, and that the cause of action arose at Karachi and the suit therefore did not lie in the Court at Hathras. SALIG RAM *v.* CHAHA MAL (1911).

I. L. R. 34 All. 49

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— **ss. 24 (1) (a), 115.**

See SANCTION FOR PROSECUTION.
I. L. R. 39 Calc. 774

——— **s. 47**—*Execution of decree—Interlocutory order—Appeal.* The Court executing a decree struck off the proceedings upon the ground of wilful default on the part of the decree-holder in prosecuting his claim. Subsequently, however, finding that the decree-holder had not really been in default, the Court cancelled its former order, held that an attachment which was in existence at that time still subsisted, and that execution should proceed *Held*, that this was not an order to which s 47 of the Code of Civil Procedure, 1908, applied. Observations of BANERJEE, *J.* in *Jogodishury Debea* v. *Kailash Chundra Lahiry, I. L. R. 24 Calc. 725*, followed. MUKHTAR AHMAD *v* MUQARRAB HUSSAIN (1912) . **I. L. R. 34 All. 530**

——— **ss. 47, 73, O. XXI, r. 55**—*Decree—Execution—Attachment—Application for execution without issuing attachment—Satisfaction of the attaching judgment-creditor's decree by payment into Court—Withdrawal of attachment—order by Court for rateable distribution and further sale—order illegal—Money paid into Court for one purpose is not assets liable to rateable distribution—Question in execution—Appeal.* At the instance of two judgment-creditors the immoveable property of the judgment-debtor was attached and his other judgment-creditors merely put in applications for execution without issuing attachment On the date fixed for the sale of the attached property, that is, on the 22nd September, 1909, the decrees of the two attaching judgment-creditors were satisfied by payment of the decretal amounts in Court and the effect was the withdrawal of the attachment under O. XXI, r 55 of the Civil Procedure Code (Act V of 1908) On the next day after the payment into Court, an *ex parte* application was made to the Court and, according to the prayer in the application, the Court ordered rateable distribution of the money paid into Court and further sale of the properties which had been attached towards further satisfaction of the claim of the judgment-creditors. *Held*, reversing the order, that by virtue of the payment of the 22nd September 1909 the attachment of the property came to an end, and there being no attachment, there could be no order for further sale of the properties. The monies which were paid in to satisfy the attaching creditor's decrees and to raise the attachment could not be treated as assets by the Court and as such distributable among other judgment-creditors who had merely applied for execution. *Vibudhapriya Tirthaswami* v. *Yusuf Sahib, I. L. R. 28 Mad. 380*, referred to. Money paid into Court for a particular purpose, as for example, under O. XXI, r. 55 of the Civil Procedure Code (Act V of 1908), could not be treated as assets distributable under s. 73 of the Code. The "assets" referred to in the section were assets held in the process of execution. The question involved in the appeal was a question in execution between the parties to decrees. Therefore it fell under the provisions of s 47 of the Civil Procedure Code (Act V of 1908) and the order passed by the lower Court was appealable SORABJI COOVARJI *v.* KALA RAGHUNATH (1911) . . **I. L. R. 36 Bom. 156**

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd*

——— **ss. 47, 73, O. XXI r. 55**—*concld.*

——— **s 48**—

1. ——— *Decree—Execution—Limitation—Decree ripe for execution.* On the 14th December 1892, the plaintiffs obtained a decree against the defendants. It directed (i) that the plaintiffs should be put in possession of certain land mortgaged to them by the defendants, and that the former should enjoy the profits of the land for 20 years in satisfaction of the amount due on the mortgage ; (ii) that the defendants should pay to the plaintiffs a certain amount of money annually in the nature of cash allowance ; (iii) that if in any year the defendants failed to make the payment, the plaintiffs were entitled to bring to sale the mortgaged land and get the money debt satisfied out of the sale-proceeds ; and (iv) that if there should be "any deficit or any just and legal obstruction of whatever nature" to the mortgaged property being sold, the plaintiffs were entitled to recover the deficiency in respect of the cash allowance from the defendants "personally and from their other property." The defendants made default in the payment of the cash allowance in 1893 with the result that the plaintiffs brought the mortgaged property to sale under an order of the Court in execution A part of the land was sold, but as the proceeds of the sale were not sufficient to satisfy the full amount of the debt, he was about to bring to sale the rest of the mortgaged property in 1908 when the Collector intervened and had the impending sale stopped on the ground that it was *watan* property. On the 19th December 1910, the plaintiffs filed the present *darkhast* to recover the balance by enforcing the personal remedy against the defendants. The lower Court rejected the application on the ground that it was barred under the provisions of s. 48 of the Civil Procedure Code of 1908. *Held*, that the application was not barred under s 48 of the Civil Procedure Code of 1908, for the twelve years' period ran only from the date when the decree became in all its parts ripe for execution. The decree became for the first time capable of execution in 1908 in respect of the personal remedy given to the plaintiffs in the fourth part ; until then, in respect of that part and that remedy, the decree was merely ancillary and provisional. The decree-holder could not till that point of time make any application for execution which it was in the power of the Court to grant, because till then there was no decree ripe for execution, so far as the personal remedy was concerned. *Per Curiam* : The execution and application contemplated by s. 48 of the Civil Procedure Code of 1908, relate to a decree which is executable at that date in

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— s. 48—*contd.*

respect of the application made and execution sought, and the "order for execution" contemplated by the provisions of the section refers to an order which the Court could have made and enforced in obedience to the terms of the decree. NARHAR RAGHUNATH *v.* KRISHNAJI GOVIND (1912).
I. L. R 36 Bom. 368

2. ——— *Limitation Act (IX of 1908), s. 9—Minor—Extension of time—Decree—Execution.* A decree obtained on the 17th February, 1898, was sought to be executed in 1901 by the decree-holder. As the decree-holder died thereafter leaving a minor son, further applications to execute the decree were filed by the minor's guardian, all within time. The minor attained majority in 1910. He then applied for the extension of the period of twelve years for the execution of the decree prescribed by s. 48 of the Civil Procedure Code of 1908, on the ground of his minority between 1901-10. *Held*, that the period could not be extended under s 48 of the Civil Procedure Code, 1908, for once the limitation began to run from the date of the decree, the twelve years' period must be computed from that date. BHAGWANT RAMCHANDRA *v.* KAJI MAHAMAD ABAS (1912) . **I. L. R. 36 Bom. 498**

3. ——— *Evasion of process of arrest is fraud within the meaning of section—Evidence Act (I of 1872), s. 35—Admissibility of returns of serving officers—Proof of due diligence, necessity for—Whether power conferred by s. 48 is discretionary—Fraud of one judgment-debtor, effect of, on execution against others.* Evasion of process of arrest is fraud within the meaning of s. 48 of the Code of Civil Procedure, 1908. *Per* PHILLIPS, *J.* The fraud of one of several judgment-debtors keeps the decree alive against all the judgment-debtors. *Per* SUNDARA AYYAR, *J.* Returns of process-servers are admissible under s 35 of the Evidence Act as evidence of facts reported by them. Fraud at some time within 12 years prior to the date of application is sufficient under s. 48 to entitle the decree-holder to apply for execution and it is not incumbent on the decree-holder to prove continuous diligence prior to such date or that, but for the fraud or force complained of, he would have realised the fruits of the decree. It is doubtful whether the language of s. 48 was intended to confer on Courts a discretion to grant or refuse execution as they might think fit. The fraud of one of several judgment-debtors will keep the decree alive only against such judgment-debtor. ABDUL KHADIR *v.* AHAMMAD SHAIWA RAVUTHAR (1912) . . . **I. L. R. 35 Mad. 670**

4. ——— *Execution of decree—Limitation—Execution prevented by fraud of judgment-debtor.* Upon a correct interpretation of clause (2) of s. 48 of the Code of Civil Procedure (1908) the effect of the proviso embodied in that clause is that the bar to execution created by the first clause of the same section is removed for a period of twelve years from any date on which the judgment-debtor has by fraud prevented the execution of the decree. *Sreenath Goho* v. *Yusoof Khan, I. L. R 7 Calc. 556*, dissented from. MOSHIN ALI *v.* MASUM ALI (1911) . **I. L. R. 34 All. 20**

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— s. 48—*concld.*

——— s. 60 (*1*) (*c*)—*Execution of decree—Mortgage—Agriculturist's house not appurtenant to his holding. Held, by* RICHARDS, *C. J.*, and TUDBALL, *J.* (BANERJI, *J.*, *dissentiente*), that s. 60 of the Code of Civil Procedure will not operate to bar the sale of a house belonging to an agriculturist in execution of a decree on mortgage of the same if such house is not an appurtenance of the mortgagor's holding which he is prohibited by law from mortgaging or tansferring. *Per* BANERJI, *J.*, the Legislature clearly intended that no Court should sell a house belonging to and occupied by an agriculturist, provided that the house is of the description mentioned in clause (*c*) of the proviso to s. 60, Code of Civil Procedure, and it makes no difference in the powers of the Court whether that house was mortgaged by the agriculturist for his debt or was not so mortgaged. The proviso forbids both attachment and sale, that is where an attachment must precede a sale it forbids attachment, as well as sale, and where attachment is not a preliminary step, it forbids sale. *Ram Dial* v. *Narpat Singh, I. L. R., 33 All. 136*, referred to. BHOLA NATH *v.* MUSAMMAT KISHORI (1911) . . . . **I L. R. 34 All. 25**

——— s. 80—*Notice of suit to Government officer acting in bad faith, if necessary.* A public officer sued in respect of an act done in bad faith is not entitled to notice under s. 80, Civil Procedure Code. *Shahunshah Begum v. Ferguson, I. L. R 7 Calc 499, Raghubans* v. *Phool Kumari, I L. R. 32 Calc 1130, Muhamad* v *Panna, I. L. R. 26 All. 220*, relied on. PEARY MOHAN DAS *v.* D. WESTON (1911)
16 C. W. N. 145

——— s. 92.

See TRANSFER . **I. L. R. 39 Calc. 146**

——— *Sanction of Advocate-General—Plaint amended—New defendant and prayers added—No sanction of Advocate-General to amendments.* Two plaintiffs as relators, having previously obtained the sanction of the Advocate-General under s. 92 of the Civil Procedure Code, filed a suit against three defendants in respect of certain charitable properties. When the suit was called on for hearing two of the defendants were struck off and the plaintiffs asked for and obtained leave to add another person as defendant and they amended the plaint and prayed for certain reliefs against the added defendant. No sanction of the Advocate-General was obtained previous to the amendment of the plaint and the addition of the new defendant. *Held*, that the plaintiffs were not entitled to maintain the suit against the added defendant on the ground that no sanction of the Advocate-General was obtained previous to his being made a defend-

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— s. 92—*concld.*

ant in the suit and previous to the amendment of the plaint. *Attorney-General* v *Fellows, 1 J. & W. 254*, followed. ABDUL REHMAN *v.* CASSUM EBRAHIM (1911) . . **I. L. R. 36 Bom. 168**

——— s. 94 (*d*)—*Receiver, appointment of, in mortgage suit—Mortgagee's right—Court's discretion—Interest and Government revenue left in arrears, if sufficient ground—Nomination of Receiver.* Though the appointment of a Receiver *pendente lite* is a matter entirely within the discretion of the Court, it must in the exercise of that discretion be guided by the circumstances of each particular case; and it has been laid down as a general rule that the appointment of a Receiver will be made as a matter of course on the application of a mortgagee if the interest payable under the security is in arrear. Where it appeared that the original mortgage debt sued upon had trebled and no interest whatever had been paid to the mortgagees, and that on the other hand the mortgagees had been compelled to advance money to pay the Government revenue on the mortgaged properties in order to save them from sale for arrears and that to recover the sums so advanced they had been compelled to bring another suit: *Held*, that it was a fit case for the appointment of a Receiver. As a general rule the right to propose a person for appointment as Receiver belongs to the party interested in obtaining the appointment and effect will be given to his nomination. But if the Court appoints a Receiver at the instance of a mortgagee—the mortgagee not having, without the assistance of the Court, power to appoint a Receiver—then the Court exercises its discretion as to who shall be appointed Receiver and appoints the Receiver whom, having regard to the interest of both mortgagee and mortgagor, the Court considers the best person. THE EASTERN MORTGAGE AND AGENCY COMPANY, LIMITED *v.* RAKEA KHATUN (1912) . **16 C W. N. 997**

——— s. 96—

See SUCCESSION CERTIFICATE ACT, SS 9, 25, 26 . **I. L. R. 36 Bom. 272**

——— ss. 96, 100—*Land Acquisition Act (I of 1894), ss. 53, 54—Land—Compulsory acquisition—Compensation—Award by Assistant Judge—Appeal to the District Judge—Second appeal—Practice and procedure.* Where an award is made by the Assistant Judge under the provisions of the Land Acquisition Act, 1894, and there has been an appeal to the District Judge, no second appeal can lie from the appellate decision. NATHUBHAI NARANDAS *v.* MANORDAS LALDAS (1911). **I. L. R. 36 Bom. 360**

——— s. 97—*Preliminary decree—Appeal—Status of agriculturists—The question if not appealed from as preliminary decree cannot be agitated in appeal on merits—Party's duty to ask Court to draw up decree—Practice and procedure.* The plaintiffs brought a suit to redeem mortgage according to the provisions of the Dekkhan Agri-

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd*

——— s. 97—*concld.*

culturists' Relief Act, 1879. A preliminary issue was raised whether the plaintiffs were agriculturists and decided against the plaintiffs. The Court ordered the plaintiffs to pay the requisite court-fee within a week's time, which not having been done, the suit was dismissed. In the appeal which the plaintiffs preferred against the final decree they sought to question the finding on the preliminary issue: *Held*, that the preliminary decree having become extinct by reason of the final decree, and the plaintiffs not having exercised their right of presenting an appeal from that decree, it was not open to them in the present appeal to challenge finding on the preliminary issue. *Held*, further, that though the statutory obligation lay on the Court to draw up a preliminary decree to entitle the plaintiffs to appeal, yet it was equally the duty of the plaintiffs to ask the Court to draw up that decree in order to enable them to present an appeal against it. GOVIND RAMCHANDRA *v.* VITHAL GOPAL (1912) . . **I. L. R. 36 Bom. 536**

——— s. 98 (2).

See SALE FOR ARREARS OF REVENUE.
I. L. R. 39 Calc. 353

——— s. 100.

See SECOND APPEAL.
I. L. R. 39 Calc. 241

——— s. 114, O'O. XLIII, r. 1 (*v*) XLVII.

See REVIEW . **I. L. R. 39 Calc. 1037**

——— s. 115—

See CRIMINAL PROCEDURE CODE, S. 476.
I. L. R 34 All. 394

See HIGH COURT, JURISDICTION OF.
I. L. R. 39 Calc. 473

1. ——— *Award—Decree framed upon award—Appeal—Application under revisional jurisdiction—Decree set aside—Grounds—Jurisdiction.* The plaintiff, as Mutawali of a Musjid at Zanzibar, brought a suit against the defendant for the recovery of certain pots and pans. Three other persons, who alleged themselves to be Mutawalis, were joined as parties apparently without any amendment of the plaint. After some progress of the suit, the presiding Judge was asked by all concerned in the Jamat (community) to arbitrate upon all matters in difference between them. The Judge framed an award on the 30th June 1904 and the award was read out in Court after notice to the parties. In the year 1909 a pleader for the plaintiff applied to have a decree framed in the terms of the award and the Judge accordingly passed a decree on the 7th April 1909. One of the defendants having appealed against the decree which was not appealable, the appeal was allowed to be converted into an application under the revisional jurisdiction s. 115 of the Civil Procedure Code (Act V of 1908) and the decree was set aside as being passed by the Judge without any

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— **s. 115**—*concld.*

sort of jurisdiction whatever. The grounds being. (i) There was no written reference to arbitration as required by law. (ii) The reference was made by a great number of persons who were not parties to the suit. (iii) The matters in difference submitted to arbitration were matters not in suit at all. (iv) The result of the said irregular proceedings was to expand the claim for the possession of a few cooking utensils into a suit for framing a scheme for the administration of a large religious endowment and no suit of the kind could have been properly launched without the previous sanction of the Advocate-General or such officer as is clothed with his functions. (v) The award was made on the 30th June 1904 and the application to have it filed was not made till 1909. The application was, therefore, manifestly time-barred. (vi) The plaintiff died early in the year 1905 and no application was ever made to bring his heirs or legal representatives on record. The suit had therefore abated by July of that year. MERALI VISRAM *v.* SHERIFF DEWJI (1911)

I. L. R. 36 Bom. 105

2. ——— *Revision—Interlocutory order—Scope of section. Held* by KARAMAT HUSAIN, *J.*—that an application under s. 115 of the Code of Civil Procedure cannot be entertained in the case of those interlocutory orders against which, though no immediate appeal lies, a remedy is supplied by s. 105, which provides that they may be made a ground of objection in appeal against the final decree *Moti Lal Kashibhai* v *Nana, I. L. R 18 Bom. 35*, followed. Inasmuch as an order under O. IX, r. 13, setting aside an *ex parte* decree can be attacked in appeal from the final decree, no application will lie for revision of such an order. *Gopal Cheiti v Subbier, I. L. R 26 Mad 604*, followed. NAND RAM v BHOPAL SINGH (1912)

I. L. R. 34 All. 592

——— **s. 141, O. XXXIX, r. 10, O. XL, r. 1**—

See GUARDIANS AND WARDS ACT, s 12, CL. (*3*) (*b*) . **I. L. R. 36 Bom. 20**

——— **s. 145.**

See FORFEITURE

I. L. R. 39 Calc. 1048

——— **s. 148, O XXXIV, r. 8**—*Mortgage—Redemption—Mortgage money not paid within time limited by decree—Power of Court to extend time* S. 148 of the Code of Civil Procedure applies to cases in which the time fixed by the Code of Civil Procedure for the doing of some act is extended and not to the extending of the time fixed by a mortgage decree for the payment of a prior mortgage. The plaintiff, in a suit for redemption of a mortgage, obtained a decree which provided in the event of non-payment, not that he should be debarred from all right to redeem the mortgaged property, but that his suit should be dismissed Owing to a *bond fide* mistake, the plaintiff paid into Court within the time limited less than the sum actually due *Held*, that the Court had power under O. XXXIV, r. 8, of the Code of Civil Procedure to extend the time limited for payment of the full decretal amount. HET SINGH *v* TIKA RAM (1912)

I. L. R. 34 All. 388

——— **O. VII, r. 10**—*Plaint returned for presentation to proper Court—Court to which such plaint is represented, bound to give credit for the fee levied by the Court to which the plaint was first presented* Where a Court after receiving a plaint and cancelling the stamp affixed thereto returns the plaint for presentation to the proper Court under O VII, r. 10, of the Civil Procedure Code of 1908. The latter Court to which the plaint is represented is bound to give credit to the fee already levied by the former Court. This is the existing practice in this Presidency and there is nothing in the new Code of the Civil Procedure in the Presidency Small Cause Courts Act or in the City Civil Courts Act to indicate that the Legislature intended to interfere with such practice *Prabhakarbhat* v. *Vishwambhar Pandit, I L. R 8 Bom 313*, followed. VISWESWARA SARMA *v* NAIR (1912)

I. L. R. 35 Mad. 567

——— **O. IX, r. 8**—*Plaintiff offering no evidence, if defendant may prove case in written statement—Civil Procedure Code (Act V of 1908), O. IX, r. 8.* When the plaintiff offers no evidence the Court can only dismiss the suit for want of prosecution In such a case if the defendant offers evidence in support of his case, the Code of Civil Procedure does not provide for such evidence being received. When, however, the plaintiff has adduced evidence, then notwithstanding that at the close of the plaintiff's case, the Judge has formed an opinion in the defendant's favour, the defendant can insist on calling evidence to prove the case made in his written statement. *Ex parte Jacobson. In re Pincoffs, 22 Ch. D 312*, referred to KESRI CHAND KOTHARI *v.* NATIONAL JUTE MILLS CO, LD. (1912) . . . . **16 C. W. N. 968**

——— **O. IX, rr. 8 and 9, s. 151**—*Dismissal of suit for default—Restoration—Sufficient cause—Court's inherent power to restore* O. IX, r. 9, of the Code of Civil Procedure, 1908, makes it compulsory on a Court to set aside a dismissal under r. 8 where the plaintiff satisfies the Court that there was sufficient cause for non-appearance. It, however, cannot take away the Court's power to restore the case for any other valid reasons. LALTA PRASAD *v.* RAM KARAN (1912)

I. L. R. 34 All. 426

——— **O XI, r 13**—*Affidavit of documents—Inspection—Discovery* When an affidavit of documents has been filed by one party under

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— O. XI, r. 13—*concld.*

O. XI, r 13 of the Code, the other party is not necessarily precluded from subsequently applying under r 18, paragraph 2 of the same Order for further inspection and discovery BASANTA COOMAR GOSWAMI *v.* KUMUDINI DASSI (1911)'

16 C. W. N. 81

——— O. XIV, r. 6.

See ADMINISTRATOR PENDENTE LITE.

I L. R. 39 Calc. 587

——— The Court cannot, where there is no agreement as is indicated in O. XIV, r. 6, of the Civil Procedure Code, go outside the allegations in the plaint in order to decide an issue as to whether the plaint discloses a cause of action. KSHITISH CHANDRA ACHARYA CHOUDHURI *v.* OSMOND BEEBEE (1912)

16 C. W. N. 516

——— O. XVII, r. 3; O. IX, r. 4—*Adjourned hearing—Suit dismissed on merits—Remedy of plaintiff—Procedure* At an adjourned hearing of a suit in the Court of a Munsif the plaintiffs were not present and their pleader intimated to the Court that he had no instructions to go on with the case This suit was thereupon dismissed under O. XVII, r 3, of the Code of Civil Procedure, 1908, on the ground that the claim was not proved. The plaintiffs then made an application for restoration under O. IX, r. 4. The Munsif dismissed the application and his order was affirmed by the District Judge *Held*, on application in revision by the plaintiffs, that no revision lay The suit having been dismissed under O. XVII, r. 3, of the Code on the merits, the plaintiffs' remedy was by way of appeal against the Munsif's decree *Lalta Prasad* v. *Nand Kishore, I. L R 22 All. 66*, followed. GAURA BIBI *v.* GHASITA (1911) . **I. L. R. 34 All 123**

——— OO. XX, r. 12 (*2*); XXI, r. 102 and XXII, r. 10; and s. 2 (*11*).

See MESNE PROFITS.

I. L R. 39 Calc. 220

——— O. XXI, r. 2.

1. ——— *Payment not certified if may be taken to extend limitation* Under O. XXI, r. 2 of the Civil Procedure Code, an adjustment or payment of a decree which is not duly certified cannot be recognised by the Court for any purpose whatever, *e g.*, for extending the time of limitation. KUTBULLAH SARKAR *v.* DURGA CHARAN RUDRA (1912).

16 C. W. N. 396

——— *Assignment of decree for benefit of judgment-debtor—Execution by assignee—Civil Procedure Code (Act XIV of 1882), s. 258.* *A* held a decree against *C*. It was arranged between *C* and *B* that *B* should advance the decree amount to *C* as a loan and that an assignment of the decree should be obtained in the name

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd*

——— O. XXI, r. 2—*contd*

of *B* for the benefit of *C*. The decree was accordingly assigned to *B* who applied for execution. *C* set up the above arrangement as a bar to execution. *B* contended that such arrangement amounted to an adjustment of the decree and not being certified to the Court it could not be given effect to under O. XXI, r. 2, of the Civil Procedure Code. *Held* (their Lordships differing), *per* ABDUR RAHIM, *J* That the arrangement amounted to an adjustment of the decree and not being certified, could not be pleaded as a bar to execution. The prohibition contained in O. XXI, r 2, is not confined to cases where the parties to the transaction adjusting the decree stood at the date of such transaction in the relation of judgment-creditor and judgment-debtor *Per* SUNDARA AYYAR, *J*. That O XXI, r 2, does not make uncertified adjustments invalid but merely forbids effects being given to such adjustments when they are set up as a defence to the execution of a decree by one entitled to do so. The section will not disentitle the judgment-debtor to prove facts which will show that the applicant is not the real transferee, even if the facts he relies on show that the decree has been adjusted. The prohibition regarding uncertified adjustments will not apply where the adjustment is made with a third party PONNUSAMI NADAR *v* LETCHMANAN CHETTIAR (1912) . . . . **I. L. R. 35 Mad. 659**

3 ——— *Fraudulent decree obtained jointly by two brothers—Admission in partition suit between brothers by one that decree fraudulent and that debtor released upon payment of portion—Entry of satisfaction by the other of his share only of decree as discharged by payment—Application to execute for the balance—Executing Court if may act on the admission.* *S1*, and *S2*, two brothers, obtained a decree against *B*. Subsequently in a partition suit instituted by *S2* against *S1*, *S2* having complained that *S1* had not entered in the assets of the family property the decree against *B*, *S1* filed a written statement in which he admitted that the decree had been obtained by fraud on account of enmity between the brothers and *B* and that *B* had been released of his liability under it upon payment of Rs. 200 only out of the decretal amount The payment, however, was certified in execution as made in part satisfaction only of the decree. Subsequently *S1* died and *S2* filed a certificate in execution admitting receipt of another Rs. 200 from *B* and the full satisfaction of his half share of the decree and then applied on behalf of the minor sons of *S1* for execution of the alleged unsatisfied balance of the decree : *Held*, that the case really did not fall under the provisions of r. 2, O. XXI, Civil Procedure Code, as it was not a question of payment or adjustment of the decree, and the executing Court was justified in placing reliance on an admission solemnly made by the decree-holder himself prior to the application for execution in a suit in which the genuineness of the decree was in

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— **O. XXI, r. 2**—*concld.*

issue, and in dismissing the execution petition on its basis. BABAR ALI BOSAR *v.* SHISIR KUMAR BASU (1912) . . . **16 C. W. N. 951**

——— **O. XXI, r. 2, cls.** *(1), (3)*—*Adjustment of decree, not certified through alleged fraud of decree-holder—Remedy of judgment-debtor—Execution Court, if may recognise adjustment* It is not open to the Court of execution to enquire into the fact of a payment or adjustment of a decree which has not been certified or recorded as provided in cl *(1)* of r. 2, of O. XXI, Civil Procedure Code, even when the conduct of the decree-holder is alleged to have been fraudulent *Gadadhar Panda* v *Shyam Churn Naik, 12 C. W. N. 485, Ramayyar* v *Ramayyar, I. L. R. 21 Mad. 356, Trimbak Ram Krishna Ranade* v. *Hari Laxman Ranade, I. L. R. 34 Bom 575; 12 Bom L. R. 686,* referred to. *Semble* It is open to the judgment-debtor to institute a suit for damages for fraud [*Promanand Khasnabish* v. *Khepoo Paramanik, I. L. R. 10 Calc 354,* referred to] and the decree-holder also renders himself liable to proceeding under the criminal law *Madhub* v. *Novodeep, I. L. R. 16 Calc. 126, R* v *Bapuji, I. L. R. 10 Bom. 288, R.* v. *Muthuraman, I. L. R. 4 Mad. 325, R* v *Pillala, I. L. R. 9 Mad. 101,* referred to. Where the judgment-debtor having appealed against the decree sought to be executed withdrew the appeal upon an adjustment come to with the decree-holder, and the fact of such adjustment was stated before the Appellate Court and was recorded in its order: *Held,* that an application by the judgment-debtor to the Court in which execution was subsequently applied for by the decree-holder praying for an investigation as to the facts of the adjustment was in substance one in continuation of the application before the Appellate Court and the two applications together constituted a sufficient compliance with the provisions of O XXI, r. 2, cl. *(1),* and the fact of the payment should have been enquired into by the Court. BIROO GORAIN *v.* JAIMURAT KOER (1911) . . . . **16 C. W. N. 923**

——— **O. XXI, r. 5** *(2)*—

See CIVIL PROCEDURE CODE, 1882, ss. 263, 264, 318, 319 **I. L. R. 36 Bom. 373**

——— **O. XXI, r. 16**—*Decree—Assignment—Application for execution—Attachment before hearing judgment-debtor's objections—Notice to assignor and judgment-debtor—Attachment proceedings not merely irregular but illegal* The transferee of a decree having preferred a *darkhast* for execution, the judgment-debtor's property was attached in his shop by seizure before hearing his objections. The next day an order was made on the application of the judgment-debtor that the property should not be removed until his objections had been heard. Subsequently the Court heard the judgment-debtor's objections and held that the transferee was entitled to execution of the decree against the judgment-debtor, the omission to hear the judgment-debtor's objections was a mere irregularity and proceedings in attachment should not be set aside. *Held,* reversing the order and dismissing the *darkhast,* that Legislature having provided that the decree should not be executed until the objections had been heard, the proceedings were unlawful and not merely irregular as the objections of the judgment-debtor had not been heard KASSUM GOOLAM *v* DAYABHAI AMARSI (1911) **I. L. R. 36 Bom. 58**

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— **O. XXI, r. 16**—*concld.*

——— **O XXI, r. 23**—*Remand—Finding that burden of proof has been wrongly laid, without finding that the decision of the first Court is wrong* It is not a good ground for passing an order of remand under O XLI, r 23, of the Code of Civil Procedure, to say that the preliminary issue has been decided by the Court of first instance on a wrong view of the burden of proof, unless the Appellate Court also finds that that decision is wrong. HABIB-ULLAH KHAN *v.* LALTA PRASAD (1912) **I. L. R. 34 All. 612**

——— **O. XXI, r. 35**—*Suit for recovery of joint possession—Form of decree—Practice. Held,* that a plaintiff who is entitled to possession jointly with other persons can be granted a decree for joint possession, whether the plaintiff was originally in joint possession and was subsequently dispossessed, or whether he had never been in possession *Phani Singh* v *Nawab Singh, I. L. R. 28 All. 161,* dissented from *Bhairon Rai* v. *Saran Rai, I. L. R. 26 All. 588, Rahman Chaudhri* v. *Salamat Chaudhri, All. Weekly Notes, 1901, p 48, Watson & Co* v *Ram Chand Dutt, I. L. R. 18 Calc. 10,* and *Bhola Nath* v. *Buskin, All. Weekly Notes, 1894, p 127,* referred to. JAGARNATH OJHA *v.* RAM PHAL (1911) **I. L. R. 34 All. 150**

——— **O. XXI, r. 46.**

See PROHIBITORY ORDER **I. L. R 39 Calc 104**

——— **O. XXI, rr. 46, 52**—*Annuity, instalments not accrued due if attachable—Right to annuity if may be attached—"Debt," meaning of. A* executed a conveyance of all his properties in favour of his son for the payment of his debts, it being provided therein that the purchaser would pay the vendor a monthly sum of Rs 4,000, the first payment to be made on the 1st October 1905 and the payment for every succeeding month on the first day of the month following between the hours of 1 A M. and 6 A M, the deed further providing that the vendor would not by mortgage or otherwise sell or charge or alienate the allowance payable to him; that on no account and in no circumstances was it to become payable to any person other than the vendor or his duly constituted attorney. The allowance was further declared to be a first charge upon a specified share of the estate so far as the

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— O. XXI, rr. 46, 52—*concld*

subsisting mortgages executed by the vendor would allow: *Held*, that the allowance payable as annuity could not be regarded as a debt or even as a portion of the consideration for the conveyance payment of which was deferred, and no instalment of such allowance could be attached under r 46 of O XXI of the Civil Procedure Code until it should have actually fallen due A sum payable upon a contingency is not a debt and does not become one until the contingency has happened Whether a claim is a debt or not is in no respect determined by a reference to the time of payment. *Held*, further, that the allowance could not also be attached under r 52 of O. XXI of the Code, as that rule does not allow of an anticipatory attachment of money expected to reach the hands of a public officer and is restricted only to money actually in his hand *Quære*: Whether notwithstanding the restrictions upon alienation embodied in the conveyance the right to receive the annuity is attachable in execution. PADMANAND SINGH *v* RAMAPROSAD MALVI (1911) . . . . **16 C. W. N. 14**

——— O. XXI, r. 57—

1. ——— *Execution of decree—Attachment—Application for execution dismissed but subsequently restored on review* By a mistake of the Court an application for execution against property which was under attachment was dismissed, but the decree-holder obtained a review of that order and the executing Court was directed to proceed There was no order removing the attachment. *Held*, on application by the decree-holder to sell the attached property, that the attachment still subsisted and was valid as against a sale made by the judgment-debtor previous to the review. AZIZ BAKHSH *v* KANIZ FATIMA BIBI (1912) **I. L. R. 34 All. 490**

2. ——— *Attachment before judgment—Application for execution dismissed—Attachment if ceases—Second application for execution—Attachment if must be asked for* An order for attachment before judgment obtained at the instance of the decree-holder subsists after the decree for the purpose not merely of the original application for execution but for purposes of subsequent applications for execution as well. Where in such a case the original application for execution was dismissed: *Held*, that the decree-holder might apply for sale of the properties without taking out fresh attachment. The attachment referred to in the concluding portion of O. XXI, r. 57, is an attachment made under the provisions of O. XXI and not an attachment under the provisions of O. XXXVIII. GANESH CHANDRA ADAK *v.* BANWARI LAL RAY (1912) . . **16 C. W. N. 1097**

——— O. XXI, rr. 58, 59, 60—*Claim petition if may be determined after property attached is sold—Revision.* The Court acted in excess of its authority and in violation of the express provisions of the Statute in allowing a claim petition

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— O. XXI, rr. 58, 59, 60—*concld.*

preferred under O XXI, r 58, after the property attached was sold, and the order allowing the claim was liable to be set aside on revision. GOPAL CHANDRA MUKERJEE *v* NOTOBAR KUNDU (1912) **16 C. W. N. 1029**

——— O. XXI, rr 58, 61—*Claimant in possession under a collusive sale if in possession as trustee for judgment-debtor* A judgment-debtor with the object of defrauding his creditor executed a collusive sale of his property in favour of a third person who was put in possession and preferred a claim to the property under r 58 of O. XXI of the Civil Procedure Code, when the same was attached by the creditor in execution of his decree: *Held*, that the claim should be rejected on the ground that the property was in possession of the claimant in trust for the judgment-debtor within the meaning of r 61 of O XXI of the Civil Procedure Code. It was not necessary, in order to defeat the claim, to show that the trust was one capable of enforcement by law. W C. MCINTOSH *v.* BIDHU BHUSAN SEN (1912) . . . . **16 C. W. N. 959**

——— O. XXI, r. 89—*Execution of decree—Property sold by judgment-debtor to a third person after execution sale—Judgment-debtor not competent to apply to have auction sale set aside.* Where a judgment-debtor, after the sale in execution of his immoveable property, sold such property to a third party, it was *held* that the judgment-debtor was not competent thereafter to apply under O. XXI, r. 89 of the Code of Civil Procedure, 1908, to have the execution sale set aside. *Debi Prasad Pandit* v. *Muhammad Unis Arabi*, *14 Oudh Cases 33*, approved. ISHAR DAS *v* ASAF ALI KHAN (1911) . . . **I. L. R. 34 All. 186**

——— O XXI, r. 90.—*Sale, application to set aside—Irregularity and consequent inadequacy of price established—Real value of the property found not to exceed decree which could not be further executed owing to limitation—Substantial injury whether made out—Debtor's right.* Where it was found that there had been irregularities in conducting and publishing a sale of immoveable property in execution of a decree and that the property was sold at an inadequate price in consequence, the mere fact that the real value of the property sold did not exceed the amount of the decree, and that the unsatisfied balance of the decree could not be realised from the judgment-debtors by reason of limitation, would not bring the case within the proviso to O XXI, r. 90 A debtor is entitled to have those steps taken for which provision is made by the Code for the purpose of ensuring that his property will realise an adequate price and so enable him to pay off his debt in money or money's worth SANTO PROSAD SINGH *v.* SHEW NARAIN (1912) **16 C. W. N. 1022**

——— O. XXI, r 99—*Civil Procedure Code (Act V of 1908), O. XXI, rr. 58, 63, 99—Claim, dismissed for non-prosecution—Obstruction by claimant to taking of possession by purchaser—Court if bound*

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd*

O. XXI, r. 99—*concld.*

—*To investigate into bona fides of claim.* Where a claim preferred under O XXI, r. 58, to immoveable property attached in execution of a money decree was dismissed for non-prosecution, and the property was sold, but the purchaser on proceeding to take possession was obstructed by the claimant *Held*, that the only remedy of the claimant after his claim was dismissed under O XXI, r 63, though for default, was by a fresh suit and he could not ask the Court to hold an investigation of the claim under O XXI, r. 99 JUGAL KISHORE MARWARI *v* AMBIKA DEVI (1912) . **16 C. W. N. 882**

O. XXII, r. 57—*Restoring a dismissed application for execution, effect of—Attachment of property terminated by dismissal of application for default—Sale after dismissal of application, purchaser if affected by restoration order* A property was attached in execution of a decree. Subsequently the application for execution was dismissed for default; after the dismissal the judgment-debtor sold the property. The proceeding in execution was subsequently restored under O XXII, r 60, and sale-proclamation re-issued. On an objection by the purchaser to the sale: *Held*, that the attachment having under O. XXII, r 57, come to an end the revival of the execution proceedings did not operate as a revival of the attachment so as to prejudice the rights of strangers who have in the interval acquired an interest in the property *Zainulabdin* v. *Mahomed Ashgar*, *L R 15 I. A 12*, *Janukdhari Lal* v. *Gossain Lal Bahiya*, *I L R. 37 Calc 107*, *s c 11 C L J. 254*; *13 C W. N 710*, *Chetiattil v Kumhi*, *I L. R 29 Mad. 175*; *Sasirama Kumari* v. *Meherban Khan*, *13 C L J. 240*. PATRINGA KOER *v.* MADHAVA NAND RAM (1911) . . . . **16 C. W. N. 332**

O. XXIII, r. 1 (*2*)—*Withdrawal of suit when to be allowed.* Courts in India have no general power of dismissing a suit with liberty to the plaintiff to bring a fresh suit on the same matter The only power they have in this respect is that given by O. XXIII, r 1, sub-r. (*2*), Civil Procedure Code. It is not the object of that Rule to enable the plaintiff, after he has failed to conduct his suit with proper care and diligence and after his witnesses have failed to support his case, to obtain the opportunity of commencing the trial afresh in order to avoid the result of his previous misconduct of the case and so to prejudice the Opposite Party HIRA LAL MITRA *v* UDOY CHANDRA DEY (1912) . . **16 C. W. N. 1027**

O. XXV, r 1 (*3*)—*Female plaintiff, security for costs from—Suit to recover ornaments or their value if suit for payment of money.* A suit by a lady against the adopted son of her deceased husband and others for a declaration of her title to certain ornaments and other moveable properties alleged to have been wrongfully removed from her custody by the defendants and for recovery of possession of the same and in the alternative for the value of the properties, was a suit for payment of money within the meaning of O. XXV, r 1, cl. (*3*), of the Civil Procedure Code *Degumbari Debi* v *Ashutosh Banerjee*, *I L R 17 Calc 610*, *Sonabai* v *Tribhowandas Narotamdas Malvi*, *I. L. R 32 Bom 602*, followed ANANDAMOI CHOWDHURANI *v.* GOKUL CHANDRA ROY (1912) . **16 C. W. N. 763**

O. XXXIII—*Suit by widow in formâ pauperis—Death of plaintiff—Right of executor who is not a pauper to continue the suit in formâ pauperis.* The privilege of maintaining a pauper suit is a personal privilege granted to people who have no means of carrying on or continuing litigation, and there seems to be no authority whatever for holding that the representative of a pauper is entitled to continue the suit of his testator or testatrix, even though admittedly he is not a pauper, simply because his testator or testatrix was a pauper MANAJI RAJUJI (RAO SAHEB) *v* KAHANDOO BALOO (1911) **I. L. R. 36 Bom. 279**

O. XXXIII, r. 7—*Shebait personally indigent and not possessed of idol's properties if may apply for leave to sue in formâ pauperis to recover idol's property in hands of co-shebaits contesting suit.* A *shebait* applied for leave to sue *in formâ pauperis* to recover certain endowed properties which, he alleged, some of the defendants who were his *co-shebaits* had illegally alienated in favour of the other defendants Neither in his personal capacity nor as *shebait* was he possessed of sufficient means to enable him to pay the court-fees prescribed for the plaint: *Held*, in revision, that the application could not be rejected merely because the *shebait* defendants held properties of the idol sufficient to pay the requisite court-fees NANDA LAL CHATTERJEE *v.* DWARKA NATH DAS (1911) **16 C. W. N. 93**

O. XXXIV.

See TRANSFER OF PROPERTY ACT (IV OF 1882), ss 88, 89 . **I. L. R. 34 All. 72**

O. XXXIV, r. 1—

See HINDU LAW—JOINT FAMILY. **I. L. R. 34 All. 549, 572**

O. XXXIV, r. 6—

See PROVINCIAL INSOLVENCY ACT (III OF 1907), ss 16 AND 31. **I. L. R. 34 All. 106**

O. XLI, r. 10—*Security for costs of appeal—Discretion of the Court—Inability of appellants to pay costs—Appeal by Government servant—Interest of the Government—Nature of security—Bond of the Secretary of State for India in Council.* When the plaintiff-respondent applies under O. XLI, r. 10 of the Code of Civil Procedure for security for the costs of the appeal and of the original suit in view of the fact that the defendants-appellants have no immoveable property and are in impecunious circumstances and that somebody else who is not a party to the suit but has an interest in

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— **O. XLI, r. 10**—*concld.*

it have been defraying the costs of the litigation. *Held*, that it was a case where the Court should exercise its discretion in directing security for the costs to be given. D. WESTON *v.* PEARY MOHAN DAS (1911) . . . **16 C. W. N. 119**

——— **O. XLI, r. 11**—*Appeal—Summary dismissal—Judgment not necessary—Lower Appellate Court.* In dismissing an appeal under O. XLI, r. 11, of the Civil Procedure Code (Act V of 1908), it is not obligatory upon the lower Appellate Court to write a judgment TANAJI DAGDE *v.* SHANKAR SAKHARAM (1911) . . **I. L. R. 36 Bom. 116**

——— **O. XLI, r. 22**—

1 ——— *Cross-objections against co-respondent, when may be entertained—Registration Act III of 1877, s. 47—Mortgage, execution—Collateral agreement postponing operation till fulfilment of conditions—Fulfilment of conditions—Operation as from date of execution—Delivery, if essential.* The language of O. XLI, r 22, sub-r (*1*) of the Civil Procedure Code, is comprehensive enough to admit of a cross-objection being preferred by one respondent against another. As a general rule, the right of any respondent to urge a cross-objection should be limited to his urging it only against the appellant, and it is only by way of exception to this general rule that one respondent may urge a cross-objection as against another respondent; but as to this no exhaustive rule can be formulated and the entertainment of cross-objections against co-respondents cannot be limited to those cases only where the appeal opens up questions which cannot be disposed of completely without matters being allowed to be re-opened as between the co-respondents The true test ought to be whether for the ends of justice it is necessary upon the appeal of one party that the matter should be re-opened so far only as he is concerned or whether the whole case should be reviewed and some of the respondents allowed to urge a cross-objection against their co-respondents JADUNANDAN PROSAD SINGH *v.* DEO NARAIN SINGH (1911) . . . . **16 C. W. N. 612**

2. ——— *Procedure—Cross-objections entertainable though appeal was not so—Specific Relief Act (I of 1877), ss 39 and 42—Separate suits for cancellation of a document and for possession—Practice.* A respondent may file cross-objections and the Appellate Court may act upon them notwithstanding that the appeal in which such objections are filed is not maintainable. Ordinarily where a plaintiff is out of possession and he is in a position to claim a decree for possession, he should not be permitted to obtain merely a decree for the cancellation of an instrument according to which, if genuine, he has no title. SHANKAR LAL *v.* SARUP LAL (1911) . **I. L. R. 34 All. 140**

——— **O. XLI, r. 25**—*Failure by Appellate Court to frame material issue not raised and tried—Material irregularity—Revision by High Court* A suit for damages against a Steamer Company for loss due to short delivery was decreed by the Munsif who did not frame and try the issue whether notice under s. 10 of the Carriers Act had been served on the Company, that issue not having been presented to him by the parties. The Subordinate Judge on appeal reversed that decree and dismissed the suit on the ground that service of notice under the said section had not been made out. *Held*, that the failure of the Subordinate Judge to frame and try the requisite issue under r 25, O XLI, Civil Procedure Code, was in the circumstances a material irregularity which might have led to a failure of justice. RAMJAS AGARWALLA *v* INDIA GENERAL NAVIGATION AND RAILWAY COMPANY, LD (1911) **16 C. W. N. 424**

CIVIL PROCEDURE CODE (ACT V OF 1908)—*concld.*

——— **O. XLI, r. 25**—*concld*

——— **O. XLI, r. 33**—*Appeal—Procedure—Power of Appellate Court to interfere with portion of decree not challenged by either party* Plaintiff sued defendant for rent and obtained a decree for a portion of his claim. Plaintiff then appealed against the disallowance of the balance of the amount claimed, but defendant submitted to the decree and neither filed a cross appeal nor took objections under O. XLI, r. 22, of the Code of Civil Procedure, 1908. *Held*, that it was not competent to the Appellate Court acting under O. XLI, r 33, to interfere with the decree obtained by plaintiff in so far as it had not been challenged by defendant *Attorney General* v *Simpson* [*1901*] *2 Ch 671*, referred to. RANGAM LAL *v.* JHANDU (1911) . . . . **I. L. R. 34 All. 32**

——— **O. XLVII, r. 1**—*Ex parte decree, if may be reviewed on the ground that defendant had sufficient cause for not appearing—Limitation* The fact that a defendant against whom an *ex parte* decree was passed did not apply within time under O. IX, r 13, Civil Procedure Code, for a revival of the case is no bar to his applying for a review of the decree under O. XLVII, r. 1, of the Code on the ground that he was prevented by sufficient cause from appearing at the hearing *Raj Narain Purkait* v. *Ananga Mohan Bhandari, I. L R 26 Calc. 598*, relied on. CHET NARAIN SAHI *v.* RAMPAL MANJHI (1911) . **16 C. W. N. 643**

——— **Sch. I, O. XXV, r. 1 and O. XXXIII, r 1**—*Order for security for costs—Leave granted to continue suit as a pauper—Practice.* An order to give security for costs obtained in a suit filed in the ordinary course must cease to operate as regards antecedent costs if leave is given to continue the suit as a pauper, provided the leave is granted before the time limited for giving security has expired. BAI LAXMI *v* HARJIVAN NATHU (1911) . . **I. L. R. 36 Bom. 415**

——— **Sch. II, rr. 15, 16.**

See ARBITRATION. **I. L. R. 39 Calc. 822**

CIVIL TRESPASS.

See PENAL CODE, S. 441.

16 C. W. N. 1007

CLEAR RECEIPT.

See CARRIERS . **I. L. R. 39 Calc. 311**

CLERICAL MISTAKE.

See DECREE, AMENDMENT OF.
I. L. R. 39 Calc. 265

COAL.

——— wrongful removal of—

See JURISDICTION. **I. L. R. 39 Calc. 739**

COAL MINES.

——— grant of—

See DIGWARI TENURE .
I. L. R. 39 Calc. 696

COGNIZANCE OF OFFENCE.

See MAGISTRATE . **I. L. R. 39 Calc. 119**

COLLECTOR

See CIVIL PROCEDURE CODE, 1882, ss 324A, 272, 285. **I. L. R 36 Bom. 519**

See CIVIL PROCEDURE CODE, 1882, s 325A . **I. L. R. 36 Bom. 510**

See HEREDITARY OFFICES ACT, BOMBAY, s. 67 . **I. L. R. 36 Bom. 420**

See LIMITATION ACT .
I. L. R. 36 Bom. 325

See MAMLATDARS' COURTS ACT, BOMBAY, s. 23 . **I. L. R. 36 Bom. 123**

——— award by—

See LAND ACQUISITION ACT.
I. L. R. 36 Bom. 599

——— powers of—

See LAND REVENUE CODE, BOMBAY, ss. 56, 214 . **I. L. R. 36 Bom. 91**

COLLECTORATE REGISTER.

——— Collectorate Registers giving details as to the arrears of the different villages and the Government Revenue chargeable thereon at the time of the settlement were admissible in evidence as public documents, although it might not be possible to specify with absolute certainty for what purpose the measurements had been made and the registers prepared. LAL MOHAR THAKUR *v.* SHEW GOLAM LAL (1911)
16 C. W. N. 590

COMMISSION AGENTS.

——— liability of—

See ADULTERATION.
I. L. R. 39 Calc. 682

COMMON GAMING HOUSE.

See COTTON-GAMBLING.
I. L. R. 39 Calc. 968

COMMON LAW.

See HINDU LAW—WIDOW.
I. L. R 36 Bom. 383

COMMON OBJECT.

See RIOTING . **I. L. R. 39 Calc. 781**

——— not unlawful—

See RIOTING . **I. L. R. 39 Calc. 896**

COMPANIES ACT (VI OF 1882).

——— ss. 6, 40, 41—

——— *Finality of certificate of incorporation—Practice—Res judicata—Civil Procedure Code, 1882, s. 13, expl 2.* A certificate of incorporation of a company under the Indian Companies Act of 1882 is conclusive as to the fact of incorporation and that all previous requisites had been complied with. *Peel's Case, L. R. 2 Ch 674*, approved Where the invalidity of a certificate of incorporation might and ought to have been made a ground of attack within the meaning of the Civil Procedure Code, 1882, s. 13, expl. 2, in a former suit between the same parties . *Held*, that it was *res judicata* under that section. *Kameswar Pershad* v *Rajkumari Ruttan Koer, I L. R 20 Calc. 79 , L R. 19 I. A 234*, followed. MOOSA GOOLAM ARIFF *v.* EBRAHIM GOOLAM ARIFF (1912)
L. R. 39 I. A. 237; 16 C. W N. 937

——— ss. 28, 45, 61—*Indian Contract Act (IX of 1872), ss. 2 (a), (b), 3, 10—Company—Shareholder—Inducement by the agent of the Company to take shares—Winding up—Recovery of calls on shares—Agreement that shares were not to be paid unless dividend was given—Agreement not registered—Payment of shares in cash—Condition precedent—Condition subsequent—"Bogus" shareholder.* The question as to whether a particular person became a member of a Company is a question of fact. Where the Agent of a Company induces a person to sign an application for the shares of the Company and that person's name is accordingly entered in the register of members as a shareholder, there is a complete contract between that person and the Company's agent under ss 2 (*a*), (*b*), 3 and 10 of the Indian Contract Act (IX of 1872). No contract by which shares are to be considered as duly paid when they are not in fact paid up is valid unless it is registered and when there is no such registered contract the shares are payable in cash Where in the event of a company not making a profit the shares were not to be paid for at all, the shareholder was a "bogus" shareholder, and this is opposed to the whole object of the Companies' Acts in England and in India. Calls made in the winding up being calls for something unpaid on the shares are not a debt due to the Company but are contributions due by a member under s. 61 of the Indian Companies' Act (VI of 1882) and he is liable to pay them. The contribution under the section also applies to unpaid calls made before the winding up; because although that is a debt due to the Company it is not the less "an amount unpaid" on the shares with respect to which the member is liable. When the Manager of a Company forwards to an applicant notice that he is entitled to shares in the Company accompanied by a form of applica-

COMPANIES ACT (VI OF 1882)—*concld.*

——— **ss. 28, 45, 61**—*concld.*

tion for shares and the applicant signs the form of application and returns it to the Manager, the applicant becomes liable as a shareholder, notice of allotment being immaterial. MOTILAL CHUNILAL *v.* THAKORLAL CHIMANLAL (1912)
I. L. R. 36 Bom. 557

COMPANY.

See COMPANIES ACT, S 28
I. L. R. 36 Bom. 557

See MORTGAGE **.I. L. R. 39 Calc. 810**

1. ——— *Company, proprietors of zemindari forming into a, if opposed to public policy.* Where the proprietors of a zemindari having grown too numerous formed themselves into a limited liability company and the company was duly registered under the provisions of the Indian Companies Act: *Held*, that such a course was likely to be beneficial not merely to the proprietors themselves but to all who may be compelled to have dealings with them, and there was nothing in the constitution of the company which was opposed to public policy LAL GOPAL DUTT CHOUDHURY *v.* THE KHORORIAH MAJOZILLA ZEMINDARY SYNDICATE, LTD. (1911)
16 C W. N. 297

2. ——— *Transfer of shares in company—Two claimants to shares standing in name of third party—Priority of title—When it prevails.* The rule laid down in *Moor* v *North-Western Bank*, *[1891] 2 Ch. 599*, followed: namely, that, as between two persons claiming title to shares in a company which are registered in the name of a third person, priority of title prevails unless the claimant second in point of time can show that as between himself and the company before the company received notice of the claim of the first claimant he, the second claimant, has acquired the full *status* of a shareholder: or at any rate that all formalities have been complied with and that nothing more than some purely ministerial act remains to be done by the company which, as between the company and the second claimant, the company could not have refused to do forthwith So that, as between himself and the company, he may be said to have acquired a present absolute unconditional right to have the transfer registered before the company was informed of the existence of a better title SETHNA, R. D. *v.* NATIONAL BANK OF INDIA (1911) . . **I. L. R. 36 Bom. 334**

3. ——— *Internal defects in management of a limited company—Innocent party not affected thereby—Principal and agent—Fraud of agent in withholding information from principal—Principal not affected by notice to agent in such case—Absolute undertaking to execute a mortgage on specified property on the happening of a particular contingency—Effect of such undertaking as giving a charge over the property on the occurrence of the contingency.* By a mortgage of the 15th April 1905 the defendants mortgaged to the plaintiff certain property to secure a loan of six lacs. Under the

COMPANY—*contd*

mortgage the plaintiff had the right to appoint a nominee to be a director of the defendants and he appointed one Dani, his *munim* in Bombay, as such nominee In June 1907 the defendants borrowed three lacs on a cash credit opened with the Bank of India for one year from June 11th, 1907 The said transaction was made conditionally on the defendants giving an undertaking not to further charge the property previously mortgaged to the plaintiff and a resolution to that effect was passed at a meeting of the defendants' directors at which Dani was present. No letter of undertaking was in fact given. The loan from the Bank of India was renewed at the end of the year for another year. The Bank made some attempt to obtain a higher rate of interest but in the end the loan was renewed at the same rate as before. In 1909 the defendants failed to pay the said loan to the Bank of India when due Finally, the said loan was renewed for three months on further security being given on June 30th, 1909 On August 5th, 1909, the defendants applied to the plaintiff for a further advance of five lacs, of which two lacs were required urgently on the security of the said property mortgaged to the plaintiff The plaintiff consulted Dani who approved of the transaction The plaintiff thereon advanced two lacs and received a receipt for the sum in which it was stated that the said two lacs formed part of a sum of five lacs intended to be advanced by the plaintiff, that the plaintiff should have time to consider whether he would advance the said sum of five lacs as a further charge and that in the event of the plaintiff deciding to advance such sum the defendants would execute a proper legal deed of charge to secure such sum and interest and in the event of the plaintiff deciding not to make such further advance the said sum of two lacs should be repaid immediately with interest and together with the original loan of six lacs At the date of the said receipt there were only three directors of the defendants and not four, the minimum number under the Articles of Association of the defendants. Thereafter the plaintiff decided to make the proposed advance and signified his intention to the defendants A formal deed of charge was prepared but not executed owing to the insolvency of the defendants and other circumstances On August 10th the plaintiff for the first time received notice of the resolution of the defendants in favour of the Bank of India. The plaintiff had the receipt passed in his favour by the defendants stamped as a charge on land and registered On September 17th, the defendants were declared insolvent and Mr. R. D. Sethna was appointed liquidator As such liquidator he was ordered to sell the mortgaged property and hold the sale-proceeds subject to the amount due to the plaintiff The liquidator sold the mortgaged property and paid the plaintiff's claim on the mortgage of six lacs. The plaintiff sued the defendants for a declaration that he was entitled to a charge on the balance of the sale-proceeds for two lacs and interest and for payment of that sum. *Held*, that there was no properly constituted Board of Directors of the defendants at the date of the

COMPANY—*concld.*

said receipt, but held that the resolution of the defendants' directors in favour of the Bank of India was exhausted after one year and was not renewed on the renewal of the loan by the Bank of India *Held*, further, that Dani had withheld information from the plaintiff as to the said resolution in favour of the Bank of India fraudulently and that the plaintiff could not be imputed to have received notice of the resolution, that in any case the defendants would not be allowed to take advantage of their breach of resolution, and that the plaintiff's rights were in no way prejudiced by irregularities in the internal management of the defendants, such as the absence of a Board at the date of the receipt in favour of the plaintiff, of which the plaintiff had no notice *Held*, further, that the receipt given by the defendants to the plaintiff amounted to an unconditional undertaking to execute a deed of further charge in favour of the plaintiff on the happening of a future event, namely, on the plaintiff tendering the sum of three lacs, the balance of the proposed loan of five lacs, on the property specified therein, for the whole amount of five lacs, of which the two lacs already advanced was a part, and that the said receipt consequently gave the plaintiff a valid charge over the defendants' property for the two lacs advanced and interest. SHIVLAL MOTILAL *v.* THE TRICUMDAS MILLS COMPANY, LD. (1912)
I. L. R. 36 Bom. 564

COMPENSATION.

See BOMBAY IMPROVEMENT ACT, 1898.
I. L. R. 36 Bom. 203

See Civil PROCEDURE CODE, 1908, ss. 96, 100 . . **I. L. R. 36 Bom. 360**

See DISTRICT MUNICIPAL ACT (BOMBAY), s 160 . **I. L. R. 36 Bom. 47**

See LAND ACQUISITION.
I. L. R. 39 Calc. 33

See LAND ACQUISITION ACT.
I L. R. 36 Bom 599

See RAILWAYS ACT (IX OF 1890), ss 75, 80
I. L. R. 34 All. 422

See SHEBAIT . **I. L. R. 39 Calc. 33**

——— **apportionment of—**

See BOMBAY IMPROVEMENT ACT, 1898
I. L. R 36 Bom. 203

——— **for breach of contract—**

See CONTRACT . **I. L. R 34 All. 429**

——— **for vexatious accusations—**

See CRIMINAL PROCEDURE CODE, s 250
I. L. R. 34 All. 354

——— ——— ——— *Appellate Court, power of—Criminal Procedure Code (V of 1898), s. 250—Consequential or incidental order.* An Appellate Court has no power to order compensation under

COMPENSATION—*concld.*

s 250 of the Criminal Procedure Code MEHI SINGH *v.* MANGAL KHANDU (1911)
I. L. R. 39 Calc. 157

COMPLAINT.

See MAGISTRATE . .
I. L. R. 39 Calc. 119

COMPROMISE.

See CIVIL PROCEDURE CODE, 1882, ss. 13, 462. . **I. L. R 36 Bom. 53**

See EVIDENCE ACT (I OF 1872). s 44
I. L. R. 34 All. 143

See HINDU LAW—INHERITANCE.
I. L. R. 34 All. 65

COMPROMISE DECREE.

See RES JUDICATA.
I. L. R. 35 Mad. 75

CONCILIATION.

See DEKKHAN AGRICULTURISTS' RELIEF ACT, ss. 39, 48 **I. L. R. 36 Bom. 183**

CONDONATION.

See DIVORCE . **I. L. R. 39 Calc. 395**

CONDUCT.

——— **causing injury to health—**

See DIVORCE . **I. L. R. 39 Calc. 395**

CONFESSION.

1. ——— *Verification.* Where a confession was verified by a Magistrate, the proper course for the prosecution was to examine the Magistrate himself and not the other verification witnesses whose evidence would be inferior to his KADER SUNDAR *v* EMPEROR (1911).
16 C. W. N. 69

2. ——— *Retracted confession made after long police custody, admissions in, not retracted, if admissible.* N who was charged with an offence under the Arms Act made a confession in the course of which he stated he was a member of a *Samity*, but subsequently retracted the confession by a statement in which he repeated that he was a member of the *Samity Held*, that the statement that he was a member of the *Samity* was good evidence against himself, even though the original confession might have been made after long police custody. *Amir Khan* v. *King-Emperor, 7 C. W. N. 457, Barindra Kumar Ghose* v *Emperor, 14 C. W N. 1114, I L R. 37 Calc. 467, King-Emperor* v *Annya, 3 Bom L. R 438*, and *Emperor v Abani, 15 C. W N 25*, referred to PULIN BEHARI DAS *v.* KING-EMPEROR (1911) . . . **16 C. W. N. 1105**

CONSENT DECREE.

See CIVIL PROCEDURE CODE, 1882, ss 13, 462 . . **I. L. R. 36 Bom. 53**

See PROCEDURE **I. L. R. 36 Bom. 77**

CONSENT DECREE—*concld.*

——————— *Res judicata—Consent decree between predecessors-in-title of parties in suit—Civil Procedure Code (Act V of 1908), s. 11.* A consent decree has to all intents and purposes the same effect as *res judicata* as a decree passed *per invitum* and this notwithstanding the words in s. 11 of the Civil Procedure Code "has been heard and finally decided." *In re South American and Mexican Company, [1895] 1 Ch. 37,* followed. A consent decree come to between the predecessors-in-interest of the present parties touching matters now substantially and directly in issue between them is *res judicata* BHAISHANKER NANABHAI *v.* MORARJI KESHAVJI & Co. (1911) **I. L. R. 36 Bom. 283**

CONSENT OF GOVERNMENT.

See MAGISTRATE. **I. L. R. 39 Calc. 119**

CONSEQUENTIAL OR INCIDENTAL ORDER.

See COMPENSATION **I. L. R. 39 Calc. 157**

CONSEQUENTIAL RELIEF.

——————— prayer for—

See COURT-FEE. **I. L. R. 39 Calc. 704**

CONSIDERATION.

——————— effect of non-payment of—

See CONTRACT ACT (IX OF 1872), s. 39. **I. L. R. 34 All. 273**

CONSPIRACY.

See PENAL CODE, ss. 34, 109, 467. **I. L. R. 36 Bom. 524**

See PENAL CODE, s. 121A.

——————— *Suit for damages for—Conspiracy provision relating to, in the Indian Penal Code, if excludes civil action for other conspiracies—Common unlawful object—Arrest of father by Magistrate and Police officers to induce son to confess to a crime—Motive, difference in, amongst persons so conspiring not material—Special damages, to what extent to be proved, in suit for damages for conspiracy—Malicious prosecution by joint tortfeasors and conspiracy, different causes of action for—Limitation—Limitation Act (XV of 1877), Sch. II, Arts. 23, 36, 120—Standard of proof for actionable conspiracy, if same as for criminal offence—Assessment of damages.* The law does not permit of a man being arrested in order to put pressure on his son to confess even if the person causing the arrest believed that by so doing he will get evidence that will lead to the conviction of persons engaged in a huge conspiracy. Where three persons were found to have acted in concert in having a man arrested with that object, the fact that two of them did not believe the story upon which the charge against the son was based to be true whilst the third believed in its truth was no ground for the exemption of the latter from

CONSPIRACY—*concld.*

liability for damages resulting to the father from the conspiracy, for the motive of one conspirator may be different from that of the others. The standard of proof of a conspiracy in a suit for damages resulting therefrom is not in India the same as if the defendants were being tried on a criminal charge. *In the Goods of Gopessur Dutt* (unreported) relied on. A suit for damages resulting from a conspiracy which would be indictable at Common Law lies in British Indian Courts according to the principles of justice, equity and good conscience and the Indian Penal Code by providing for only one form of criminal conspiracy, *viz.*, to wage war against the King, cannot be considered to have taken away this civil remedy either expressly or by necessary implication. *Quinn* v. *Leathem, [1901] A. C. 495,* followed. A suit brought on a conspiracy must be kept strictly to the cause of action that has been set out in the plaint. If a conspiracy is, as in this case, indictable at Common Law, it gaves rise to civil liability if damage has been occasioned by it to the plaintiff. The present suit being based on two causes of action, *viz.*, (i) to recover the damage occasioned to the plaintiff as the result of an actionable conspiracy; and, (ii), to recover damages for malicious prosecution against the defendants as joint tortfeasors: *Held,* that the suit, though instituted beyond the period of limitation provided for suits for compensation for malicious prosecution, was, in regard to the first mentioned cause of action, not barred by limitation, as it was brought within the period provided by Art. 36 or Art. 120 of the Limitation Act, the former article being applicable to the matter, and if it did not apply the latter being applicable. Damage to a substantial amount should be proved by the plaintiff in order to establish a cause of action for conspiracy, though if substantial damage is proved the damages awarded need not be limited to the precise amount proved. *Held,* that the plaintiff should recover the amount he had to spend owing to his arrest, such damage not being too remote. PEARY MOHAN DAS *v.* D. WESTON (1911) . . . . **16 C. W. N. 145**

CONSTRUCTION.

See DEKKHAN AGRICULTURISTS' RELIEF ACT, S 2, EXPL (*b*) **I. L. R. 36 Bom. 151**

See DISTRICT MUNICIPAL ACT (BOMBAY), S 160 . . **I. L. R. 36 Bom. 47**

CONSTRUCTION OF DOCUMENT.

See CIVIL PROCEDURE CODE, 1882, SS 584, 585 . . **I. L. R. 34 All. 579**

See HINDU LAW—WILL. **I. L. R. 34 All. 405**

See LANDLORD AND TENANT. **I. L. R. 34 All. 545**

See LETTERS PATENT, S. 10. **I. L. R. 34 All. 13**

CONSTRUCTION OF DOCUMENT— *contd.*

See MAHOMEDAN LAW—GIFT.
I. L. R. 34 All. 478

See MORTGAGE . **I. L. R. 34 All. 446**

1. ——— *Bond, construction of—Rate of interest—Stipulation to pay interest at Re. 1-9 per month and compound interest with six monthly rests—"Per cent" if to be read into the stipulation.* Where the executants of a bond which secured an advance of Rs. 2,000 stipulated therein "we shall pay interest on this sum at the rate of Re 1-9 per month" and "we shall pay the interest every six months from this date. If we fail to do so interest and compound interest shall at the end of every six months be added to the principal and we shall go on paying interest thereon at the aforesaid rate until the time of repayment": *Held*, that, upon a true construction of this bond, the stipulation was that interest should be paid at the rate of Re. 1-9 per cent per month. INDRO DEB DAS *v.* AZIZUR RAHAMAN SARKAR (1912)
16 C. W. N. 957

2. ——— *Contract—Broker's commission—Authority "to raise loans" on security of immoveable property—Broker, if entitled to commission on finding capitalist, when latter insists on a margin of security not proposed or agreed to by borrower—Construction of contract—Broker if must find funds or only capitalist—English rules of construction, artificial if to be applied here—Time, when essence of contract—Quantum meruit, for services if may be claimed when no case established under contract as expressed.* The defendants being urgently in need of money to save their property from sale executed the following letter of authority in favour of the plaintiffs. "We authorise you to raise a loan of 11 lakhs (or less, if so required) to clear all our present debts on mortgage of our entire estate at an interest of 7 per cent. per annum within the period of one month We agree to pay you a commission of 5 per cent on such amount as may be advanced by the capitalist to us . . . . ." The defendants did not state what the value of the security was, but the plaintiffs on their own responsibility represented to the capitalist whom they found that the value of the property would be not less than 20 lakhs and the capitalist insisted upon satisfactory proof that there was that margin of security before he would agree to make the advance The negotiation with the capitalist having for this reason fallen through, the plaintiffs sued for recovery of the stipulated commission: *Held*, that upon a construction of the contract that the stipulation was not merely to find a capitalist ready and willing to advance the money but also to procure funds for the satisfaction of the debts of the defendants. That even assuming that the plaintiffs undertook only to find a person ready and willing to advance the money, they had not done so, as the capitalist whom they found imposed a condition as to the margin of security never proposed or accepted by the borrowers, and at no stage of the negotiations was he ready to accept the estate as it stood as security for the loan, *i. e.*, to advance the funds on the terms prescribed by the principal. *Held*, also, that time was, in the circumstances, of the essence of the contract, and no case had been made out of an extension of time by continuation of *bonâ fide* negotiations for completion. *Quœre:* Whether an implied contract, to pay the agent a *quantum meruit* for his services could be presumed, when there was an express contract upon which the plaintiff's case failed. *Held*, that no such case having been made by the plaintiffs, and no evidence given to show upon what scale remuneration could be calculated *quantum meruit* no relief could be granted on that basis, *Quœre* Whether the technical meaning ascribed to the expression "to raise a loan" in English cases, implying that the agent who is engaged "to raise a loan" discharges his duty as soon as he finds a creditor who is able and willing to advance money, should be imported in the interpretation of contracts in this country. *Held*, that where the remuneration of an agent is payable upon the performance by him of a definite undertaking, he is entitled to be paid that remuneration as soon as he has substantially done all that he undertook to do, even if the principal acquires no benefit from his services, and, except where there is an express agreement or special custom to the contrary even if the transaction in respect of which the remuneration is claimed falls through, provided it does not fall through in consequence of any act or default of the agent KISHAN PROSAD SINGHA *v.* PURNENDU NARAIN SINGHA (1911)
16 C. W. N. 753

3. ——— *Lease—Unilateral mistake, not induced by fraud—More land included in lease than intended by lessor—Rectification mistake when ground for—Contract, if may be repudiated—Second appeal.* Where as a matter of construction a certain plot of land was found to be included in a lease having regard to its terms and the character of the property, but the Court of Appeal below refused to give effect to this construction on the ground that the lessor did not intend to include this plot in the area leased *Held*, on second appeal, that in the absence of fraud making the document inoperative as a title to the land in suit, or of failure through a common mistake to give correct expression to the common intention of the parties, such as would be a ground for its rectification, the contract as expressed could not be repudiated by the lessor and the lower Appellate Court erred in law in not giving effect to it. SOMARUDDI MOLLAH *v.* THE PORT CANNING AND LAND IMPROVEMENT COMPANY, LIMITED (1911) . . . **16 C. W. N. 225**

4. ——— *Letter of guarantee—Guarantee, letter of, construction of—Conditional or unconditional guarantee—Undertaking by broker to find money on mortgage of debtor's property and pay off sum advanced by creditor—Debtor declining to make the mortgage through broker, if*

CONSTRUCTION OF DOCUMENT— *concld*

discharges broker's liability to pay off advance. *D* being in financial difficulties approached *V* for an advance of 1½ lac of rupees, representing that he was about to raise a loan of 11 lacs on a first mortgage of certain Mills through broker *B* and would pay off *V's* advance out of that loan *V* advanced the money to *D* upon *B* signing a guarantee to this effect: "In consideration of your having at my request acceded to the proposal of *D* to advance to him a sum of Rs. 1½ lacs, I hereby bind myself to you to procure a loan within two weeks of Rs 11 lacs as the first mortgage of the Mills, and to pay you thereout the sum of Rs. 1½ lacs agreed to be advanced by you to the Mills:" *Held*, that by this document, *B* gave a substantial undertaking that a loan should be procured and out of the loan the sum of Rs. 1½ lacs was to be paid to *V*, and not merely a conditional undertaking that *B* would procure the lending of 11 lacs if a first mortgage of the Mills was given and pay thereout Rs 1½ lacs to V. VISSANJI, SONS & COMPANY *v* SHAPURJI BURJORJI (1912)

16 C. W. N. 769
I. L. R 36 Bom. 387

CONTEMPORANEA EXPOSITIO.

See SANAD, CONSTRUCTION OF
I. L. R. 36 Bom. 639

CONTRACT.

See CONSTRUCTION OF DOCUMENT.
16 C. W. N. 753

See CONTRACT ACT (IX OF 1872), S 39
I. L. R. 34 All 273

See MINOR.
I. L. R. 34 All. 296

See PRINCIPAL AND AGENT.
I. L. R. 39 Calc. 802

——— **to sell—**

See REGISTRATION ACT, SS 3, 17, 40
I. L. R. 35 Mad. 63

——— **variation of—**

See SALE FOR ARREARS OF REVENUE
I. L. R. 39 Calc. 981

1. ——— *Sale of goods—Goods not appropriated—Re-sale, power of, in contract—Measure of damages* The plaintiffs contracted to sell 750 tons of sugar at an agreed price for delivery in equal instalments from August to December 1910 under an agreement which contained the following term: "The goods to be at the buyer's risk and peril from the time of landing of the sugar until they be removed from jetty, dock, ghât or godown, and should the buyers fail to take delivery of the sugar, the sellers will have the option of re-selling the same in the open market by private sale or by public auction and hold the buyers responsible for all consequences" The defendants failed to take delivery of 125 tons under the August shipment. The goods remained in bulk and were never ascertained or even appropriated for the purposes of the agreement After notice to the defendants the plaintiffs purported to dispose of the goods under the power of re-sale provided in the agreement and brought an action for the recovery of damages estimated on the basis of such re-sale. *Held*, that as the goods had not been ascertained or even appropriated for purposes of the agreement, they did not come within the power of re-sale as framed, and the "re-sale" was inoperative as a method of measuring damages. *Moll Schutte & Co* v *Luchmi Chand*, *I L. R 25 Calc 505*, distinguished *Semble* A power of re-sale in a contract can be so framed as to operate on goods even before appropriation. Inasmuch as the claim for damages was based on re-sale in the circumstances of the case, no decree could be made for damages on the basis of the difference between the contract and market rates. ANGULLIA & Co *v* SASSOON & Co (1912)

I. L. R. 39 Calc. 568

2. ——— *Covenant in sale-deed to discharge a debt due to a third party—Suit for compensation for breach—Actual damage not necessary to support suit—Cause of action—Limitation Act (XV of 1877), Sch. II, Art 116.* On a sale of immoveable property the vendees covenanted with the vendors to pay a certain sum of money on account of a mortgage debt due by the vendors. They did not pay in accordance with the covenant, and the mortgagee thereupon brought a suit upon his mortgage and obtained a decree *Held*, on suit by the vendors for compensation for breach of the covenant, that it was not necessary that the vendors should have suffered any loss before they could bring their suit, and that, as no time was specified in the sale-deed for the payment of the mortgage money, limitation began to run from the date of the execution of the deed. *Lethbridge* v *Mytton, 2 B. & Ad. 772; Carr* v. *Roberts, 5 B. & Ad. 78, Loosemore* v *Radford, 9 M & W 657; Ashdown* v *Ingamells, L. R., 5 Exch. D. 280; Dorasinga Tevar* v. *Arunachalan Chetti, I. L R. 23 Mad. 441; Raghunath Rai* v. *Brijmohan Singh, All Weekly Notes, 1901, 14; Kumar Nath Bhattacharjee* v. *Nobo Bhuttacharjee, I L. R 26 Calc 241*, and *Battley* v. *Faulkner, 3 Barn. & Ald 228; 22 R R 390*, referred to. RAGHUBAR RAI *v* JAIJ RAJ (1912)

I L. R. 34 All. 429

CONTRACT ACT (IX OF 1872)

——— **ss. 2** (*a*), (*b*), **3, 10—**

See INDIAN COMPANIES ACT, SS. 28, 45, 61. **I L R. 36 Bom. 557**

——— **s. 19.**—*Registered deed of gift—Right of revocation not reserved by the donor—Title of the donee—Challenge by a third party having no title* Though it might be open to a donor, within the time allowed by the law of Limitation, to attack his gift under a registered deed, which reserved no right of revocation, on the grounds mentioned in s 19 of the Contract Act (IX of 1872), still so long as the registered deed stands, the title of the donee

CONTRACT ACT (IX OF 1872)—*contd.*

——— **s. 19**—*contd.*

under it cannot be challenged by a third party who has no title. TRIMBAK BHIKAJI *v* SHANKAR SHAMRAV (1911) . . **I. L. R. 36 Bom. 37**

——— **s. 23.**

1. ——— *Agreement to remunerate third party for using his influence to bring about settlement of civil dispute, if opposed to morality or public policy* Where *A* promises to remunerate *C* in consideration of the latter undertaking to use his influence over *B* so as to effect a compromise of a civil dispute between *A* and *B*, the consideration or object of the agreement is not illegal and it is enforceable. SYED MAHOMED ZAHURUL HUQ *v.* SHAH WAZIRUL HUQ (1911) **16 C. W. N. 480**

2. ——— *Criminal breach of trust, prosecution against gomastha dropped at the instance of Magistrate on accused executing mortgage bond for the amount embezzled—Compounding non-compoundable offence, if contrary to public policy.* Where at the trial of a *gomastha* for criminal breach of trust under s. 408, Criminal Procedure Code, the Magistrate having suggested that the matter should be settled out of Court the accused executed out of Court a mortgage bond in favour of his master for the amount embezzled, and the prosecution was dropped and the accused was acquitted or discharged, though the withdrawal of the prosecution was not mentioned in the mortgage bond as forming part of the consideration: *Held*, that the mortgage bond was illegal and a suit on its basis was not maintainable. *Per* CARNDUFF, *J* —It is against public policy to compound a criminal case which is declared to be non-compoundable by the Criminal Procedure Code and an agreement to that end is wholly void in law. *Williams* v. *Bayley, L R, 1 H L. 200*, referred to. The circumstance that the Magistrate wrongfully suggested or sanctioned the compromise makes no difference *Collins* v *Ballantern, 1 Sm L C., Ed. 11 at p 369*, relied on *Sheikh Nubbee Buksh* v. *Bibee Hingon, 8 W. R 412*, not followed SHEIKH MAJEBAR RAHMAN *v* SYED MUKTASHEB HOSSEIN (1912) . **16 C. W. N. 854**

3 ——— *Agreement between several firms to fix rates for ginning and baling cotton and to share profits—Agreement neither in restraint of trade nor against public policy. Held*, that an agreement whereby certain firms fixed the rates to be charged for ginning and baling cotton and further as to the manner in which the profit should be shared by the parties thereto, was an agreement neither in restraint of trade nor opposed to public policy. *Haribhai Manek Lal* v *Sharafali Isabji, I L. R, 22 Bom. 861*, and *Fraser & Co* v. *The Bombay Ice Manufacturing Co, I L. R. 29 Bom. 107*, followed KUBER NATH *v* MAHALI RAM (1912) . . . **I. L. R. 34 All. 587**

——— **s. 25, cl.** (*3*)—*Debt barred promise to pay—Conditional promise—Suit to recover debt if lies.* Acknowledgment of a barred debt can-

CONTRACT ACT (IX OF 1872)—*contd.*

——— **s. 25, cl.** (*3*)—*concld.*

not give a fresh start to limitation in favour of the creditor. Under cl. (*3*) of s. 25 of the Contract Act a barred debt is considered a good consideration for a promise to pay, the new promise furnishing the measure of the creditor's right; the whole of the promise whether free or clogged with a condition gives the cause of action. Where *A* and *B* entered into an agreement of partnership wherein it was, *inter alia*, provided that 6 annas out of the profits of the business in the share of *A* would go toward liquidating a previous debt of Rs. 600 due by *A* to *B*, which had become time-barred at the date of the agreement. *Held*, that *B* could not recover the debt except in the manner provided in the agreement. BINDAE DASYA CHUTIANI *v.* CHOTA (1912) . . . **16 C. W N 636**

——— **ss. 32, 34, 56 and 65**—*Guarantee—Contract, construction of—Whether contingent or unconditional agreement—Inadmissibility of evidence of what took place after the execution of the contract on question of its construction.* The question for determination in this appeal was the construction of the following letter dated 7th August 1909, which was signed by the defendant, and given to the plaintiffs as security for the repayment of the loan of Rs. 1½ lakhs mentioned therein. "In consideration of your having at my request acceded to the proposal of the Secretaries, Treasurers and Agents of the Tricumdas Mills Company, Limited, to advance to the Mills Rs. 1½ lakhs, I hereby bind myself to procure a loan within two weeks of Rs 11 lakhs on the first mortgage of the Mills' block property, and to pay you thereout the said sum of Rs. 1½ lakhs agreed to be advanced by you to the Mills." In a suit for damages for breach of the contract contained in the letter, the Courts in India held in favour of the defendant that "all he had undertaken to do was to procure the lending of Rs 11 lakhs if a first mortgage of the Mills was given, and to pay thereout Rs. 1½ lakhs to the plaintiffs." *Held* (reversing that decision), that on its true construction the document amounted to a substantial undertaking by the defendant that a loan of Rs. 11 lakhs should be procured, and that out of that loan the sum of Rs 1½ lakhs should be repaid to the plaintiffs *Semble* · Evidence of what took place after the execution of the document was not admissible on the question of its construction. VISSANJI SONS & CO. *v.* SHAPURJI BURJORJI (1912) . . **I. L. R. 36 Bom. 387**

——— **s. 39**—*Contract—Mortgage—Part of consideration unpaid—Effect of such non-payment* Where on execution and registration of a mortgage an interest in the mortgaged property has vested in the mortgagee, the fact that part of the mortgage money as specified in the deed of mortgage has not been paid, neither renders the mortgage invalid nor entitles the mortgagor to rescind it at his option *Gokal Chand* v. *Rahman, Punj Rec. 1907, 274*, dissented from *Tatia v. Babaji, I. L. R. 22 Bom 176, Subba Rau* v. *Devu Shetti, I. L. R. 18 Mad 126, Bajrangi Sahai* v.

CONTRACT ACT (IX OF 1872)—*contd.*

——— s. 39—*concld*

Udit Narain Singh, 10 C W. N 932, and *Bail Nath Singh* v. *Paltu, All Weekly Notes, 1908, 38,* referred to. RASHIK LAL *v.* RAM NARAIN (1912) **I. L. R. 34 All. 273**

——— s. 43—

See LANDLORD AND TENANT **I. L. R. 34 All. 604**

——— s. 69—*Decree for rent against recorded tenant who had sold his share before the whole of the amount sued for fell due—Sale in execution set aside by deposit by a co-sharer—Latter's right to recover from recorded tenant—Contribution suit for—Suit brought after recorded tenant ceased to own any interest in the tenure if suit of Small Cause Court nature—Provincial Small Cause Courts Act (IX of 1887), Sch. II, Art. 41—Second appeal—Civil Procedure Code (Act V of 1908), s. 102, O. XXI, r. 89.* Plaintiff owned a ⅞th and the defendant No. 1 a ⅛th share in a tenure. In the beginning of 1308, B S , the latter transferred his share to a stranger Thereafter the landlord sued defendant No. 1, who was the sole recorded tenant, for arrears of rent for the years 1307 and 1308 and had the tenure sold. The sale was set aside under s 310A, Civil Procedure Code, 1882, upon the application of the plaintiff who deposited the whole amount within the statutory compensation to the purchaser Subsequently he sued for recovery of two-sevenths of the sum deposited from the defendant No 1 without making the latter's vendee a party or asking any relief from him · *Held,* that the defendant as the recorded tenant was "bound by law" to pay the amount of the decree passed against him, within the meaning of s. 69, Contract Act, and the plaintiff as a person interested in the payment of the debt within that section was entitled to be reimbursed by the defendant No. 1 ; and the fact that he had transferred his share before the arrears for 1308 accrued due was no defence against the portion of the claim which related to that year. *Held,* further, that the fact that at the date of the institution of the suit the defendant No. 1 had no interest in the tenure did not put the case outside the scope of Art. 41 of the Second Schedule of the Provincial Small Cause Courts Act, and the provisions of s. 102 of the Civil Procedure Code of 1908, restricting the right of second appeal, did not apply to it. *Krishna* v. *Gopi, I. L. R. 15 Calc 652,* explained and distinguished. *Quære :* Whether the plaintiff was in law entitled to recover more than ⅞th from the defendant No. 1 BATUK NATH MANDAL *v.* BEPIN BEHARI CHAUDHURI (1912) **16 C. W. N. 975**

——— s 74—*Loan—Default in payment—Enhanced interest—Interest calculated in anticipation added to principal—Penalty—Relief against penalty.* The defendant received Rs 2,440 on a bond which he executed for Rs 5,500 in the plaintiff's favour The balance of the amount of the bond was made up of interest calculated upon the sum of Rs. 6,000 for 39 months at the rate of 1½ per cent per mensem added in advance. The amount was made re-payable in monthly instalments of Rs 50 for the first 12 months and after that of Rs 100 for another 26 months and the balance at the end of the 39th month. In case of default in payment of any instalment, the whole amount of the bond became due at once ; but if the plaintiff waited longer the defendant agreed to pay interest at 5 per cent. per month till payment. There was default in payment ; and the plaintiff sued to recover the amount of the bond together with interest at 5 per cent. per month. The Subordinate Judge held that the stipulation for addition of interest in anticipation in the amount of the bond as also the stipulation for enhanced interest at the rate of 5 per cent. per month on default, were unenforceable at law and awarded the plaintiff's claim for Rs. 2,440 with interest at the rate of 1½ per cent per month *Held,* that both the stipulations were penal and therefore not enforceable in full by reason of the provisions of s. 74 of the Indian Contract Act, 1872. VELCHAND *v.* FLAGG (1911) **I. L. R. 36 Bom. 164**

CONTRACT ACT (IX OF 1872)—*concld.*

——— s. 74—*concld.*

——— s. 212—

See CIVIL PROCEDURE CODE, 1908, s. 20 (c). **I. L. R. 34 All. 49**

——— ss. 230 (2), 236.

See PRINCIPAL AND AGENT. **I. L. R 39 Calc. 802**

——— s. 235—*Principal and Agent—Untrue representation by agent as to extent of his authority—Liability of agent. Held,* that s. 235 of the Indian Contract Act, 1872, applies as much to the case of a person who untruly represents the extent of the authority given to him by another as to that of a person who represents himself to be the agent of another when in fact he had no authority from him whatever. *Collen* v. *Wright, 27 L. J. Q. B. 215 , 7 E. & B. 301,* referred to. GANPAT PRASAD *v.* SARJU (1911) **I. L. R. 34 All. 168**

CONTRACT OF SALE.

——— *Vendor's interest in the property sold ceasing to exist by Government Resolution—Vendor becoming entitled to other interest—Vendee cannot sue to recover the other right—Pre-emption—Personal right—Transfer—Transfer of Property Act (IV of 1882), s. 6.* The defendant, who was occupant of certain Survey Numbers, had, under a Government Resolution, a right of pre-emption in stumps of trees standing on the lands, sold the stumps to the plaintiff. After the date of the sale, Government issued another Resolution by which the right of pre-emption was abolished, and the occupant was awarded only 20 per cent of the net proceeds of the sale of the stumps by the Forest Department. This percentage was stated to be "a gift from Government and subject to no tribunal." The plaintiff sued to

CONTRACT OF SALE—*concld.*

recover the percentage from the defendant, which the latter received from Government in respect of the stumps sold by him. *Held*, that the plaintiff was not entitled to recover anything from the defendant; for what the plaintiff was claiming was a gift or bonus from Government to the defendant under a Government Resolution, which gift or bonus was not and could not have been in the contemplation of the parties when the contract was entered into and which by itself was not transferable. The right of pre-emption is a purely personal right which cannot be transferred to any one except the owner of the property affected thereby. JASUDIN *v* SAKHARAM GANESH (1911)
I. L. R. 36 Bom. 139.

CONTRACT TO ASSIGN DOCUMENT.

——— **Breach of—**

——— *Damages awardable though no loss is proved—Measure of damages.* *A* as the agent of *B*, took from *D*, a debtor of *B*, for the debt due, a bill in favour of *C*. *A* undertook to get the bill endorsed in favour of *B* by *C*. *A* having failed to do so, for more than a year, *B* sued *A* claiming as damages the amount of the bill with interest. At the settlement of issues *A* produced the promissory-note endorsed in favour of *B*. *Held*, that *B's* suit was maintainable and that the endorsement after the suit was filed could not defeat *B's* claim. The contract to obtain the assignment not having been performed within a reasonable time the contract was broken and the right to sue accrued before the suit was brought It could not be said that *B* had sustained no damage which he was entitled to recover as the bill standing in the name of a third party prevented him from suing on the original obligation. A promissory-note in consideration of a pre-existing debt is only a conditional payment; and if the promissory-note remains in the hands of the original payee when it is dishonoured, the original debt revives. If, however, the promissory-note had been endorsed to a third party a suit on the original debt would not be maintainable. *A debtor. In re*, [*1908*] *1 K B 344*, referred to. It is not necessary that *B* should prove that *D* had become insolvent or that the money could not be recovered if a suit had been brought against *D*. The amount recoverable will be the amount for which the promissory-note was executed. SUBRAMANIAN CHETTY *v.* MUTHIA CHETTY (1912)
I. L. R. 35 Mad. 639

CONTRIBUTION.

———*Contribution, suit for—Revenue-paying estate—Owner of specific villages paying entire revenue—Proportion in which other owners should contribute—Assets as basis of calculation, if those at revenue settlement or those at the date of default to be considered—Collectorate Registers, admissibility—Public document* Where Government revenue payable in respect of an estate was fixed in perpetuity on the basis of assets as they stood at the time of the settlement, and the assets were

CONTRIBUTION—*concld.*

at that time determined village by village and revenue proportionate to the assets of each village was also calculated, although the proprietor of the entire estate was made liable for the aggregate amount of revenue. *Held*, that, as between persons in whom in course of time different villages in the mehal became vested, the liability to contribute towards the revenue was to be fixed on the basis of the assets of the villages as determined at the settlement and not as found on valuation at the date of default. LAL MOHAR THAKUR *v* SHEW GOLAM LAL (1911)
16 C. W. N. 590

COPARCENARY.

See HINDU LAW—STRIDHAN.
I. L. R. 36 Bom. 424

COPY.

——— **time requisite for obtaining——**

See LIMITATION ACT (IX OF 1908), S. 12.
I. L. R. 34 All. 41

COPY OF DOCUMENT PROVED IN FOREIGN COURT.

See HABEAS CORPUS.
I. L. R. 39 Calc. 164

COPY OF JUDGMENT.

See PRIVY COUNCIL—APPLICATION FOR LEAVE TO APPEAL
I. L. R. 39 Calc. 510

CO-SHARER.

See MAHOMEDAN LAW—PRE-EMPTION.
I. L. R 39 Calc. 915

1. ——— *Joint property, exclusive possession by a co-sharer—Where possession wrongful at its inception, co-sharers if may recover joint possession* The defendant was in wrongful occupation as a tenant of a plot of land belonging to the plaintiffs and other co-sharers Subsequently the defendant purchased the share of one of these co-sharers and thus became interested in the land as a proprietor In a suit by his co-sharers for joint possession of the land in suit. *Held*, that the plaintiff's occupation being originally wrongful the subsequent acquisition of joint title did not entitle the defendant to resist the plaintiff's claim for joint possession *Watson & Co.* v. *Ram Chund Dutt, I L R 18 Calc. 10*, distinguished. SHAIKH SAMARADDI *v.* SHYAMA CHURN SEN (1911) . . **16 C. W. N. 251**

2. ——— *Co-sharer landlord, if may sue for his share of rent when no separate collection—Suit for apportionment, if lies—prayer for apportionment in rent suit, if entertainable—Parties—Decree for entire rent in favour of all co-sharers when may be made.* A co-sharer landlord can maintain a suit for his share of the rent separately if there is an arrangement for separate collection without a division of the lands amongst the co-sharers The case of *Raj Narain Mitter* v. *Ekadasi Bag, I. L R 27 Calc 479*, does not lay down that there must be a division of the lands

CO-SHARER—*concld.*

before a co-sharer can maintain a separate suit for his share of the rent. A sale of a share in an estate which has been let out in its entirety to a tenant does not of itself necessarily effect a severance of the tenure or an apportionment of rent, but if the purchaser desires such severance or apportionment, he must give the tenant due notice to that effect and then if an amicable apportionment cannot be made by arrangement between all the parties concerned, the purchaser may bring a suit against the tenant for the purpose of having the rent apportioned making all the co-sharers parties to the suit Such an apportionment can be asked and effected in the rent suit itself. But where in such a suit the plaintiff did not ask for an apportionment though he made all his co-sharers parties, the plaintiff was entitled to ask for a decree for the entire rent in favour of all the co-sharers. SHYAMA CHURN DAS *v.* JOGES CHANDRA RAY (1912) . . . **16 C. W. N. 774**

COSTS.

See EASEMENT . **I. L. R. 39 Calc. 59**

See "SHAWLS," MEANING OF.
I. L. R. 39 Calc 1029

——— **security for—**

See CIVIL PROCEDURE CODE, 1908, O. XXV, R 1 AND O. XXXIII, R. 1.
I. L. R. 36 Bom. 415

COTTON-GAMBLING.

——— "*Gambling*" *and* "*Wagering*," *distinction between—Calcutta Police Act (Beng. IV of 1866 as amended by Beng Act III of 1897), s 44—Common gaming house—Instruments of gaming—Cotton-gambling not a game of contest.* Betting must always be on an uncertain event, and betting in itself, apart from stakes being laid on a particular game or instrument of gaming in a public place, is not penal. Playing with cards, dice or money is penal if done in a public place. The offence as created by the Calcutta Police Act is a purely technical one, and nothing has ever been done on this side of India to include any form of betting or wagering without instruments in the offence, except in the single case of rain-gambling without a machine; and in order to include this, extraordinary legislation has had to be undertaken to make the books and registers in which rain-gambling wagers are entered and all other documents containing evidence of such wagers instruments of gaming. Gaming is playing at any game, sport, pastime or exercise, lawful or unlawful, for money or any other valuable thing which is staked on the result of the game, *i.e.*, which is to be lost or won according to the success or failure of the person who has staked. *Reg.* v. *Ashton 1 El & Bl 286, Lockwood* v. *Cooper*, [*1903*] *2 K. B. 428*, referred to. Wagering which includes betting is making a contract on an unacertained event past or future (in which the parties have no pecuniary interest other than that created by the

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contract) by which the parties are to gain or lose according as the uncertainty is determined one way or the other. *Carlill* v *The Carbolic Smoke Ball Co.*, [*1892*] *2 Q. B. 484*, referred to. Cotton-gambling is "betting" pure and simple. *Hari Singh* v. *Jadu Nandan Singh, I. L. R. 31 Calc. 542; 8 C. W. N. 458*, referred to. RAM PRATAP NEMANI *v.* EMPEROR (1912)
I. L. R. 39 Calc. 968

COURT.

——— **inherent powers of—**

See EXECUTION OF DECREE.
I. L. R. 34 All. 518

COURT-FEE.

See CIVIL PROCEDURE CODE, 1882, S. 411.
I. L. R. 34 All. 223

See COURT-FEES ACT (VII OF 1870), SCH. II, ART. 17 (VI).
I. L. R. 34 All. 184

1. ——— *Declaratory suit—Consequential relief, prayer for—Injunction, if consequential relief—Specific Relief Act (I of 1877), s. 42.* S. 42 of the Specific Relief Act does not sanction every form of declaration, but only a declaration that the plaintiff is "entitled to any legal character or to any right as to any property." A court-fee of Rs. 10 is not sufficient for suits that are not "declaratory suits" in the proper sense of the expression. An injunction is a consequential relief *Marsh* v *Keith, 1 Dr. & Sm. 342; 62 E. R. 410*, followed. The law as to declaratory decrees discussed DEOKALI KOER *v* KEDAR NATH (1912) . . **I. L. R. 39 Calc. 704**

2. ——— *Court-fees Act (VII of 1870), s. 8* and *Sch. II, Art 17, cl. vi—Land Acquisition Act (I of 1894), s. 32—Land Acquisition Judge, order of—Appeal—Debutter property—Memorandum of appeal—Ad valorem fee—Award.* A certain *debutter* property having been acquired under the Land Acquisition Act, the compensation money allowed by the Collector was deposited in Court. One *T* applied to withdraw that amount on the ground that she was entitled to it as executrix to the will of her late husband. On objection by one *K* that the money in deposit should be invested in Government securities and only the interest should be paid over to the *shebait*, the Land Acquisition Judge passed an order under s. 32 of the Act directing the payment of interest only to the applicant. Against this order *T* preferred an appeal to the High Court on a court-fee stamp of ten rupees only: *Held*, that the case came under the provisions of s. 8 of the Court-fees Act, and an *ad valorem* court-fee ought to have been paid. *Sheorattan Rai* v. *Mohri, I. L R 21 All 354*, and *Kasturi Chetti* v. *Deputy Collector, Bellary, I. L. R 21 Mad. 269*, referred to. *Held*, also, that to bring a case under the provisions of cl. vi of Art. 17 of Sch II of the Court-fees Act, it must be established that it was not possible even to state approximately a money value for the subject-matter in dispute; but where the claim to receive the full amount of compensation

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money was disallowed, and the only relief allowed by the Court was to withdraw the interest on the said money, there it was possible to state approximately the money value of the relief claimed, and therefore in such a case the provisions of Sch. II, Art 17, cl. vi of the Court-fees Act would not apply. *Banwari Lal* v. *Daya Sunker Misser, 13 C. W. N., 815,* followed TRINAYANI DASI *v.* KRISHNA LAL DE (1912) . **I. L. R. 39 Calc. 906**

COURT-FEES ACT (VII OF 1870).

——— **s. 8, Sch. II, Art. 17 (vi)—**
I. L. R. 39 Calc. 906

——— **s. 17**—*Suit to obtain a declaration as adopted son and to establish title to property—Injunction with respect to a house—Declaration with respect to other property—Valuation of the plaint—Valuation for pleader's fees—Special jurisdiction of the first Class Subordinate Judge—Appeal to the District Court—Second Appeal—Return of the memorandum of appeal for presentation to the High Court—Jurisdiction.* In a suit for a declaration that the plaintiff was the adopted son of *V*, and as such was entitled to his property, the plaint was valued at Rs. 130 for a declaration of the rights and at Rs. 69,016-9-0 for pleader's fees The plaintiff prayed for an injunction restraining the defendant from interfering with plaintiff's rights in respect of a house which was already in his possession and the injunction was valued at Rs. 5. With respect to the other property which was attached by the Collector after *V's* death, the plaintiff sought for a bare declaration of his rights as *V's* adopted son. The suit was tried by the First Class Subordinate Judge of Belgaum in his special jurisdiction and he allowed the claim. The defendant appealed to the District Judge and he, notwithstanding the plaintiff's preliminary objection that the appeal lay to the High Court and not to his Court, held that the First Class Subordinate Judge had no jurisdiction to try the suit under his special jurisdiction because the suit was for a declaration and consequential relief which was valued at Rs. 5 for the purposes of Court-fees, and the valuation for the purposes of jurisdiction being the same as for the purposes of Court-fees, that valuation was less than Rs. 5,000. The District Judge, therefore, entertained the appeal and having found that the plaintiff's adoption was not proved, disallowed the claim. On second appeal by the plaintiff: *Held,* reversing the decree, that the First Class Subordinate Judge was entitled to try the suit under his special jurisdiction and his decree was appealable to the High Court. The plaint distinctly laid claim to two subjects, namely, two kinds of properties, First, there was property in the possession of the Collector and its value exceeded Rs. 5,000 and that property having been in the possession of the Collector, it was not necessary for and allowable to the plaintiff to ask for an injunction. He was only entitled to a declaration of his title. The other subject-matter of the suit was the house as to which the plaintiff was

COURT-FEES ACT (VII OF 1870)—
concld.

——— **s. 17**—*contd.*

entitled to ask for a declaration and consequential relief and to put his own valuation on the plaint SHIDAPPA VENKATRAO *v* RACHAPPA SUBRAO (1912) . . . **I. L. R. 36 Bom. 628**

——— **Sch. II, Art. 17, cl. (VI.)**

———*Court-fee payable on plaint—Suit by plaintiff in joint possession to have share partitioned—Fixed fee ten rupees.* In a suit for partition, where the plaintiff alleges that he is in possession and merely claims partition of the property and separate possession of his share, a court-fee stamp of 10 rupees is sufficient. *Reoti* v. *Lachhman, All. Weekly Notes, 1900, 90, Wali-ullah* v. *Durga Prasad, I. L R, 28 All. 340,* and *Bidhata Rai* v. *Ram Charitar Rai, 12 C. W. N. 37,* followed TARA CHAND MUKERJI *v.* AFZAL BEG (1911) **I. L. R. 34 All. 184**

COURT OF WARDS.

——— **sanction of—**

See MAHOMEDAN LAW—PRE-EMPTION.
I. L. R. 39 Calc. 915

COURT-SALE.

See CIVIL PROCEDURE CODE, 1908, O. XXI, R. 5 (*2*)
I. L. R. 36 Bom. 373

COURTS (COLONIAL) JURISDICTION ACT (37 & 38 VICT. C. 27).

——— **s. 3.**

See HIGH COURT, JURISDICTION OF.
I. L. R. 39 Calc. 487

COVENANT.

See MORTGAGE.
I. L. R. 39 Calc. 828

CRIMINAL LAW AMENDMENT ACT (XIV OF 1908).

See EVIDENCE ACT, 1872, ss. 25, 114, 133, 157 . . **I. L. R. 35 Mad. 397**

CRIMINAL MISAPPROPRIATION.

See CRIMINAL PROCEDURE CODE, S. 179.
I. L. R. 34 All. 487

CRIMINAL PROCEDURE CODE (ACT V OF 1898).

——— **ss. 12, 202, 203, 476, 529 (*f*)**

See MAGISTRATE, JURISDICTION OF.
I. L. R. 39 Calc. 1041

——— **ss. 21, cl. (*2*) and 526, cl. (ii)—**

See PRESIDENCY MAGISTRATES' COURTS.
I. L. R. 35 Mad. 739

——— **ss. 36, 94, 96, 105; Sch. III (*3*).**

See TRESPASS.
I. L. R. 39 Calc. 953

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— **s. 100**—*Warrant under, legality of, when drawn up on a printed form under s. 98—Penal Code (Act XLV of 1860), ss. 147 and 332—Resistance to the execution of warrant.* There being no printed form for search warrants under s. 100, Criminal Procedure Code, printed forms issued under s. 98, are always used with the necessary modifications for that purpose. When a warrant under s. 100, Criminal Procedure Code, was drawn up on a printed form for use under s. 98, Criminal Procedure Code, and the warrant was snatched away and destroyed by the persons accused of resisting the execution of the warrant: *Held*, that as the accused destroyed the warrant, it must be presumed that the warrant under s 100 was properly drawn up on a form under s. 98, Criminal Procedure Code, with the necessary modifications. That the error, if any, in the warrant, supposing that the necessary modifications had not been made, would be one of form only. *Bisu Haldar* v. *Probhat Chandra, 6 C. L. J. 127*, distinguished. GURAMEAH *v.* KING-EMPEROR (1911) . **16 C. W. N. 336**

——— **ss. 100, 552.**

See MAGISTRATE, JURISDICTION OF.
I. L. R. 39 Calc. 403

——— **ss. 107, 145.**

See DISPUTE CONCERNING LAND.
I. L. R. 39 Calc. 150

——— *Security to keep the peace—Dispute concerning land likely to lead to a breach of the peace—Procedure.* Where there exists a dispute relating to immoveable property which is likely to lead to a breach of the peace, the magistrate concerned is not necessarily bound to proceed under s. 145, but can take action—and this may sometimes be the better course—equally under s. 145 of the Code of Criminal Procedure. *Sheoraj Roy* v. *Chatter Roy, I. L. R. 32 Calc. 966*, and *Emperor* v. *Ram Baran Singh, I. L. R. 28 All. 406*, followed. *Mahadeo Kunwar* v. *Bisu, I. L. R. 25 All. 537*, distinguished. *Balajit Singh* v. *Bhoju, I. L. R. 35 Calc. 117*, not followed. EMPEROR *v.* THAKUR PANDE (1912).
I. L. R. 34 All. 449

——— **ss. 107, 145, 146.**

See JALKAR. **I. L. R. 39 Calc. 469**

——— **s. 109, cls. (*a*), (*b*).**

See SECURITY FOR GOOD BEHAVIOUR.
I. L. R. 39 Calc. 456

——— **s. 133**—*Public nuisance—Construction of dam causing injury to village lands. A, B* and *C* being contiguous villages, of which *C* lay at a lower level than *A* and *B*, the surplus water falling on *A* and *B* used to run off through certain natural channels over the lands of village *C*. The inhabitants of *C* erected a dam to keep the water from their lands and by so doing caused flooding

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— **s. 133**—*concld.*

of and damage to the lands of *A* and *B*. *Held*, that the area and number of persons affected by the action of the inhabitants of *C* were sufficient to justify a magistrate in treating their action as a public nuisance and taking steps to abate it under s. 133 of the Code of Criminal Procedure EMPEROR *v.* BHAROSA PATHAK (1912)
I. L. R. 34 All. 345

——— **ss. 145, 147**—*Offerings made to a deity whether could be the subject-matter of proceeding under s. 145—Profits arising out of land, whether offerings—Ss. 145 and 147, analogy between.* In a proceeding under s. 145, Criminal Procedure Code, the Magistrate has no jurisdiction to make a declaration that a certain party is entitled to the possession of the offerings made to a deity in a temple. The offerings given by worshippers for the worship of any deity are not profits arising out of land, *e g*, the place of worship. These offerings arise out of the deity irrespective of the building or the land upon which he may happen to dwell. A case under s. 147, Criminal Procedure Code, is to be decided by the same procedure and on the same principles as a case under s. 145, Criminal Procedure Code. A dispute as to the possession of the offerings is a dispute about moveable property; and it is now settled law that s. 145, Criminal Procedure Code, has no concern with moveable property. RAM SARAN PATHUCK *v.* RAGHUNANDAN GIR (1910)
16 C. W. N. 574

——— **ss. 145, 526**—*Transfer "Criminal case"—"Accused person." Held*, that the expression 'criminal case' as used in s. 526 of the Code of Criminal Procedure includes a proceeding initiated under s. 145 of the Code, and that the High Court under s. 526 has power to transfer such a proceeding under one Court to another Court subject to all the conditions under which a transfer can be made. *Arumuga Tegundan, I L. R 26 Mad. 188, Lolit Mohan Moitra* v. *Surja Kanta Acharjee, I. L. R. 28 Calc. 709*, and *Gurudas Nag* v. *Gaganendra Nath Tagore, 2 C. L. J. 614*, referred to. *In re Pandurang Govind Pujari, I. L. R. 25 Bom. 179*, dissented from. An 'accused person' is one over whom a criminal Court exercises jurisdiction. *Queen-Empress* v. *Mutasaddi Lal, I. L. R. 21 All. 107*, followed. JAGGU AHIR *v.* MURLI SHUKUL (1912)
I. L. R. 34 All. 533

——— **s. 146—**

1. ——— *Attachment order under s. 146, without jurisdiction— Evidence, omission to take, when amounts to want of jurisdiction—Jurisdiction.* Where in a proceeding under s. 145, Criminal Procedure Code, the Magistrate without taking any evidence or making any local enquiry, made an order attaching the land in dispute under s. 146, Criminal Procedure Code: *Held*, that the order of the Magistrate was incompetent and without jurisdiction, as the Magistrate did

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— s. 146—*concld.*

not make the slightest effort to satisfy himself as to the *factum* of possession. *Sheikh Mansar Ali* v. *Matiullah, 12 C. W. N. 896*, relied upon *Bejoy Madhab Chowdhury* v. *Chandra Nath Chuckerbutty, 14 C W. N. 80*, referred to. SHEO BALAK RAI *v.* BHAGWAT PANDAY (1912)

16 C. W. N. 1052

2. ——— *Limitation—Attachment under s. 146 of the Criminal Procedure (Act V of 1898)—Limitation Act (XV of 1877), Sch. II, Art. 142 or 144—Arts. 47 and 120, applicability of.* Where a property was attached under s. 146 of the Criminal Procedure Code on the 7th March 1899, and it remained under attachment till the 26th February 1903 when, on the application of the purchaser of the holding of the opponent of the plaintiff in the proceedings under s. 145, who had been put in symbolical possession by the Civil Court, the Magistrate put him in possession of the same, and the plaintiff on the 28th February 1906 instituted a suit to recover possession: *Held*, that the limitation applicable would be that provided by Art. 142 or Art. 144 of Sch. II of the Limitation Act and the suit was not time-barred. *Goswami Ranchor* v. *Sri Gridharji, I. L R. 20 All. 120*, followed *Rajah of Venkatagiri* v. *Isakapalli Subbiah, I. L R. 26 Mad. 410*, dissented from. NISARALLI SHEIKH *v.* ADEBUDDI SHANA (1912) . . . . **16 C.W. N. 1073**

——— s. 147.

See DISPUTE CONCERNING EASEMENT.

I. L. R. 39 Calc. 560

——— s. 154—*First information, proper recording of, by Police.* A careful and accurate record of the first information has always been considered as a matter of the highest importance by the Courts in India, the object of the first information being to show what was the manner in which the occurrence was related when the case was first started. *Emperor* v. *Kampu Kukr, 11 C. W. N. 554*, referred to. As the first information can be used in evidence under ss. 157 and 158 of the Evidence Act to corroborate or impeach the testimony of the person lodging the first information, such a document becomes valueless if drawn up by some person other than the proper informant. As the first information in this case which related to a charge of criminal conspiracy at Midnapore was drawn up by a police-officer employed in the Criminal Investigation Department in Calcutta and settled by an attorney: *Held*, that it was of no value. PEARY MOHAN DAS *v.* D. WESTON (1911) . **16 C. W. N. 145**

——— ss. 154, 155, 157, 162 and 551.

I. L. R. 35 Mad. 247

——— ss. 162, 154, 155, 157 and 551—

See EVIDENCE ACT, ss 25, 114, 133, 157.

I. L. R. 35 Mad. 397

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— s. 172—"*Case Diaries,*" *proper recording of by investigating officer.* The object of recording "case diaries" under s. 172, Criminal Procedure Code, is to enable Courts to check the method of investigation by the Police, and this object was defeated in this case as the provisions of the law for recording "case diaries" from day to day had been deliberately disobeyed by the Police during the most important period of the investigation. *Queen-Empress* v. *Mannu*, referred to. PEARY MOHAN DASS *v.* D. WESTON (1911)

16 C. W. N. 145

——— s. 177—*Jurisdiction—Effect of place where offence was committed ceasing to be British territory.* An offence was committed in March 1910, at a place which was then part of the Mirzapur District. Subsequently one of the persons alleged to have taken part in the commission of such offence was arrested in Bengal and sent to Mirzapur, when he was committed by the Joint Magistrate to take his trial before the Court of Session. In the meanwhile the place where the offence was committed had ceased to be British territory. *Held*, that this fact did not oust the jurisdiction of either the Magistrate or the District Judge of Mirzapur. EMPEROR *v.* GANGA (1912)

I. L. R. 34 All. 451

——— s. 179—*Criminal misappropriation—Jurisdiction—"Place where consequences of act ensued"* The word 'consequence' in s. 179 of the Criminal Procedure Code means a consequence which forms a part and parcel of the offence. It does not mean a consequence which is not such a direct result of the act of the offender as to form no part of that offence. Hence where an agent in charge of a branch shop in Sultanpur misappropriated money belonging to his principal, which should have been sent to the head office at Cawnpore, it was *held* that the Courts at Cawnpore had no jurisdiction to try the agent for criminal misappropriation. *Queen-Empress* v *O'Brien, I. L. R. 19 All. 111*, and *Colville* v. *Krsto Kishore Bose, I. L. R. 26 Calc 746*, distinguished. *Babu Lal* v. *Ghansham Das, 5 All. L. J. 333*, referred to. GANESHI LAL *v.* NAND KISHORE (1912)

I. L. R. 34 All. 487

——— s. 190—*Complaint not disclosing facts—Validity when may be questioned.* The complaint in this case did not set out the facts which constituted the alleged offence but stated that the persons named had committed offences punishable under certain sections of the Penal Code: *Held*, (*per* MOOKERJEE, *J.*) That a complaint of this description constituted a merely colourable compliance with the provisions of s. 190, Criminal Procedure Code *Per* HARINGTON, *J.*—There was a complaint which the Magistrate had jurisdiction to entertain. Where a trial has been concluded the proceedings cannot be attacked on the ground that the materials the Magistrate had before him at the time he issued process, were meagre or even insufficient if the Magistrate

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd*

——— s. 190—*concld*

had jurisdiction to issue process To make the whole proceeding void it is necessary to show that there was no complaint before the Magistrate and the Magistrate had no other course but to refuse to issue process on the ground that he had no jurisdiction under the law to issue process. When the accused took no steps at the initial stage to set aside the Magistrate's order issuing process on the ground that on the face of it the materials on which it was made were insufficient, and proceeded to trial: *Held (per* HARINGTON, *J*) that no objection could be allowed to be taken to the issue of the process upon an appeal from the conviction had at the trial, the point not being one affecting the fairness of the trial in any way. *Per* MOOKERJEE, *J*. The case was covered by cl (*a*) of s. 537 of the Criminal Procedure Code. PULIN BEHARI DAS *v.* KING-EMPEROR (1911) **16 C. W. N. 1105**

——— ss. 190, 295 (*c*), 309, 530 (*k*), 531.

See MAGISTRATE. **I. L. R. 39 Calc. 119**

——— s. 195—

See PENAL CODE (ACT XLV OF 1860), ss. 182, 211. **I. L. R. 34 All 522**

See SANCTION FOR PROSECUTION **I. L. R. 39 Calc. 774**

See USING AS GENUINE A FORGED DOCUMENT **I L. R. 39 Calc. 463**

——— s. 195 (*c*)—*Sanction to prosecute—Forgery—Offence alleged not in connection with any proceeding before any Court—Sanction unnecessary.* By s. 195, cl. (*c*) of the Code of Criminal Procedure Courts are prohibited from taking cognizance of an offence described in sections 463 of the Indian Penal Code when such offence has been committed by a party to any proceeding in any Court in respect to a document produced or given in evidence in any such proceeding. The section does not remove from the cognizance of Criminal Courts an offence described in s. 463 when such an offence has been committed by an ordinary individual So long as the prosecution is confined to offences connected with a document committed prior to its production in Court, such prosecution is within the law and requires no sanction. EMPEROR *v.* LALTA PRASAD (1912) . . **I. L. R 34 All. 654**

——— s. 195, cls. (*6*), (*7*)—*Application to District Judge to revoke sanction to prosecute granted by Munsif—Transfer to Subordinate Judge, if valid—Civil Courts Act (XII of 1887), s. 22, cls. (1) and (4).* An application under sub-s. 6 of s 195, Criminal Procedure Code, is not an appeal within the meaning of sub-s. (*2*) of s. 22 of the Bengal Civil Courts Act. An application made to a District Judge for the revocation of a sanction to prosecute granted by a Munsif cannot therefore be transferred by him for disposal to a Subordinate Judge. HARI MANDAL *v.* KESHAB CHANDRA MANNA (1912) **16 C. W. N. 903**

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd*

——— s 195 (*7*), cls. (*a*), (*b*) and (*c*)—*Sanction to prosecute—Sanction refused—Further application—" Case " — " Principal Court of original jurisdiction "* In a suit for arrears of rent exceeding Rs 100, a decree was passed in favour of the appellant In course of execution proceedings the respondents made certain statements which, according to the appellant, were false The appellant applied for sanction to prosecute them under s. 195, cl. (*7*) of the Code of Criminal Procedure The sanction was refused by the Assistant Collector *Held*, on application made to the District Judge to grant sanction, that no such application lay. The " case " in connection with which an offence was alleged to have been committed was the proceedings in execution, from which no appeal lay, and the District Judge was not in relation to such proceedings the " principal Court of original jurisdiction. " AJUDHIA PRASAD *v* RAM LAL (1911) . **I. L. R. 34 All. 197**

——— ss. 195, 476—*Sanction to prosecute—Sanction set aside by superior Court and order for prosecution under s. 476 substituted—Jurisdiction. Held*, that a Court hearing an application under s 195 of the Code of Criminal Procedure to revoke sanction for a prosecution granted by a subordinate Court, has jurisdiction to set aside the order of the subordinate Court and direct a prosecution under s 476 of the Code *In the matter of the petition of Mathura Das, I L R 26 All. 80*, overruled. CHADAMMI *v* LALTA PRASAD (1912) **I. L. R. 34 All. 602**

——— s. 196—

1. ——— *Sanction—Vagueness. Per* MOOKERJEE, *J* —When the persons sought to be prosecuted were all named in the sanction and the sections of the Code under which they were alleged to have committed offences as also the period of their activity were specified, the mere fact that those persons were not described as members of a revolutionary society (the existence of which was sought to be established at the trial) did not affect the validity of the sanction. The sanction was neither vague nor did it amount to a delegation of authority vested in the Local Government. *Barindra Kumar Ghose* v. *Emperor, 14 C. W. N. 1114 I. L R. 37 Calc. 467*, distinguished. PULIN BEHARI DAS *v.* KING-EMPEROR (1911) . . **16 C. W. N. 1105**

2. ——— *Sanction by Local Government, validity of—Objection that Local Government illegally constituted if may be taken.* Where a conviction under s 121A of the Penal Code at a trial which was sanctioned under s. 196, Criminal Procedure Code, by the Local Government was challenged on appeal to the High Court on the ground that the Local Government was not legally constituted and had no authority to sanction the prosecution : *Held (per* HARINGTON, *J.*) That it was not open to persons who had been convicted to question the right of the *de facto* Government of the Province to exercise any of

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— s. 196—*concld.*

those powers which a Government may lawfully exercise, no such point having been taken at an early stage of the trial by motion to the High Court, and the fairness of the trial and the merits of the case being in no way affected. *Per* MOOKERJEE, *J*—Sanction having been given by the *de facto* Local Government and cognizance having been taken by the *de facto* Sessions Judge, it was not open to the persons convicted at the trial to question collaterally the legality of the conviction upon the allegation that the Local Government was irregularly constituted and the Sessions Judge irregularly appointed The acts of one who although not the *de jure* holder of a legal office was actually in possession of it under some colour of title or under such conditions as indicated the acquiescence of the public in his actions cannot be collaterally impeached in any proceeding in which such person is not a party. *Parker* v *Kett, 1 Lord Raymond, 658; 12 Mad 467; R.* v *Redford Level Corporation, 6 East, 659,* followed. PULIN BEHARI DAS *v* KING-EMPEROR (1911)
16 C. W. N. 1105

——— ss. 202, 203—*Complaint, dismissal of, without giving opportunity to the complainant to prove his case.* After the examination of the complainant the Magistrate should dismiss the complaint at once or elect to hold inquiry under s. 202, Criminal Procedure Code, before issuing process. Where the Magistrate examined the complainant on the 28th April and without dismissing the complaint then and there adjourned the case to the 26th May, and then on that date after making certain enquiries from the solicitor of the accused and looking into papers which had been filed by the defence before the police, dismissed the complaint: *Held,* that the procedure adopted by the Magistrate was irregular and that having virtually elected to hold an enquiry under s 202, Criminal Procedure Code, he should not have dismissed the complaint without giving an opportunity to the complainant to adduce evidence in support of his case, and if upon such opportunity being given, he still failed to produce his witness, then his case might have been dismissed upon that ground. SANDYAL *v.* KUNJESWAR MISRA (1911) . . **16 C. W. N. 143**

——— s. 203—*Dismissal of complaint under s. 203 without taking sworn statement of complainant.* A Presidency Magistrate may dismiss a complaint under s. 203 of the Criminal Procedure Code on a police report without examining the complainant. The verification on oath of a complaint before a Magistrate is a sufficient compliance with the provisions of s. 203. The omission to examine will, at the most, amount to an irregularity of the description covered by s. 537, Criminal Procedure Code. *Re* VELU NATTAN (1912) **I. L. R 35 Mad. 606**

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— s. 213 (*2*)—

See JURISDICTION OF MAGISTRATE.
I. L. R. 39 Calc. 885

——— ss. 221, 223, 350—

See RIOTING. **I. L. R. 39 Calc. 781**

——— ss. 222, 234, 239—*Charges misjoinder of—Criminal misappropriation or breach of trust—Charge how to be framed where several persons are implicated—Joint charge, illegality of* Where in a case more than one person were jointly charged with the offence of criminal breach of trust under s. 408, Indian Penal Code, with respect to a sum of money: *Held,* that there was a misjoinder of charges in the case The wording of s. 222, Criminal Procedure Code, refers to a single accused; and it must be so because it is impossible to hold that two persons can be guilty of misappropriation of the same parcel of money. S 239, therefore, has no application to such a case. When two persons are implicated in a case of criminal misappropriation or breach of trust with respect to a certain sum of money, the charges against them must be of misappropriation in one case and of abetment in the other. It is also open to the Court to frame the charges against each of them in the alternative, *i e*, of misappropriation or abetment. GIRWAR NARAIN *v.* THE KING-EMPEROR (1912). **16 C. W. N. 600**

——— s. 250—

See COMPENSATION
I L. R. 39 Calc. 157

——— *Frivolous or vexatious complaint—Award of compensation to accused—Award to be made by order of discharge or acquittal and not by separate order Held,* that s 250 of the Code of Criminal Procedure was not intended to meet the case of false accusations, but of frivolous and vexatious accusations *Held,* also, that the direction to pay compensation in a case found to be frivolous or vexatious cannot be made in a subsequent proceeding, but must form part of the order of discharge or acquittal. RAM SINGH *v.* MATHURA (1912) . . **I. L. R 34 All. 354**

——— s. 263—*Hearing and recording of evidence—Complainant and his witnesses, examination of—Procedure—Practice.* S 263 of the Criminal Procedure Code does not excuse the Magistrate from hearing the evidence of all witnesses In all criminal cases the complainant and such witnesses as he may produce must be examined, whether their evidence is required to be recorded or not, and the case must be decided upon the effect of their evidence JABBAR SHAIK *v.* TAMIZ SHAIK (1912) . **I. L. R. 39 Calc. 931**

——— s. 407—*Sanction to prosecute—Application to Magistrate of the first class—Appeal to District Magistrate—Transfer—Jurisdiction.* S. 407 of the Criminal Procedure Code does not entitle a District Magistrate to send appeals under s. 195

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— s. 407—*concld.*

of that Code to a Magistrate of the first class subordinate to him. That section deals with appeals from convictions *Sadhu Lal* v *Ram Churn Pasi, I. L. R. 30 Calc. 394*, followed. EMPEROR *v.* LAL SINGH (1911) **I. L. R. 34 All. 244**

——— s. 423—

See RIOTING. **I. L. R. 39 Calc. 896**

———*Appeal—Power of Appellate Court to alter finding of acquittal into one of conviction* An Appellate Court can, under s. 423 of the Criminal Procedure Code in an appeal from a conviction, alter the finding of the lower Court, and find the appellant guilty of an offence of which the lower Court has declined to convict him. *Queen-Empress* v. *Jabanulla, I L. R. 23 Calc. 975*, followed. EMPEROR *v.* SARDAR (1911) **I. L. R. 34 All. 115**

——— s. 437—

See FURTHER INQUIRY. **I. L. R. 39 Calc. 238**

——— *Discharge, order of, by High Court Sessions, if any bar to fresh proceedings—Nolle prosequi.* An order of discharge by the High Court in the exercise of its Original Criminal Jurisdiction is no bar to fresh proceedings being taken before a competent Magistrate upon complaint or upon a police report or under s. 190 (*c*) of the Code of Criminal Procedure *Mir Ahwad Hussain* v. *Mahomed Askari, I. L. R. 29 Calc. 726, F. B*; *6 C. W. N. 633*, referred to. Where an accused person was put upon his trial before the High Court Sessions on charges punishable under ss. 363 and 366 of the Indian Penal Code and an order of discharge was passed upon the Advocate-General entering a *nolle prosequi*, and subsequently the accused being again sent up to take his trial upon the same charges, the Deputy Magistrate held that he could not be so tried: *Held*, that the Magistrate was wrong in declining jurisdiction which he undoubtedly had, and he was bound to adjudicate on the charges properly laid before him against the accused. *Held*, also, that the order of discharge by the High Court Sessions could not be set aside by any tribunal and it did not require to be set aside for initiation of fresh proceedings on the same charges. PUBLIC PROSECUTOR, 24-PERGUNNAHS *v.* SHEIKH IDOO (1912) **16 C. W. N. 983**

——— s. 476—

1. ——— *Preliminary inquiry—Revision.* When a Magistrate takes action under s. 476 of the Code of Criminal Procedure, it is not necessary to the validity of his order that he should hold a preliminary inquiry, nor, if he does hold preliminary inquiry, is it necessary that he should give the person against whom such inquiry is being held an opportunity of cross-examining the witnesses. *Queen-Empress* v. *Matabadal, I. L. R. 15 All. 392*, followed. ABDUL GHAFUR *v.* RAZA HUSAIN (1912) **I. L. R. 34 All. 267**

2 ——— "*Court*"—*Civil Procedure Code, 1908, s 335—Revision—Inexpediency of order no ground for revision on the civil side* The word "Court" in s. 476 of the Code of Criminal Procedure includes the successor of the Judge before whom the alleged offence was committed. *Bahadur* v. *Eradatullah Mallick, I. L. R. 37 Calc. 642*, followed. Whether a particular order is expedient or not is not a ground on which the High Court can interfere in revision under s. 115 of the Civil Procedure Code. *In the matter of the petition of* NAWAL SINGH (1912) **I. L. R. 34 All. 393**

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*concld.*

——— s. 476—*concld.*

——— s. 491—

See HABEAS CORPUS. **I. L. R. 39 Calc. 164**

——— s. 522—*Restoration of immoveable property—Appellate Court, power of—Jurisdiction.* An order under s. 522 of the Criminal Procedure Code can only be made by the Court which convicts of an offence attended with criminal force. An Appellate Court has no power to make such an order restoring possession of immoveable property. *Narayan Govind* v. *Visaji, I. L. R. 23 Bom. 494*, referred to. BHAGBAT SHAHA *v.* SADIQUE OSTAGAR (1912) **I. L. R. 39 Calc. 1050**

——— s. 526—*Stay of proceedings pending Rule issued by the High Court—Refusal of Magistrate to act on reliable information thereof—Bias.* Where after a Rule was issued by the High Court and further proceedings were stayed a telegram from the petitioner's Vakil in the High Court intimating the orders of the High Court was filed before the trying Magistrate who refused to stay proceedings: *Held*, that the Magistrate acted injudiciously, and this would justify the Court in transferring the case. *Held*, further, that if the Magistrate had really any suspicion or doubt in the matter he might have asked the muktear who made the application to verify the telegram and to satisfy him as to whether the Vakil in the High Court was acting under instructions in the case HEM CHANDRA KAR *v.* MATHUR SANTHAL (1909) . . . . **16 C. W. N. 1031**

——— s. 526, cl. (*8*)—*Application for adjournment to apply for transfer, when to be made—Hearing, commencement of, in Sessions Court.* The first step in the hearing at a Sessions trial is the reading and explaining of the charge to the accused. An application for adjournment under s. 526, cl. (*8*), Criminal Procedure Code, must therefore be made before the charge is read to the accused. *Quære.* Whether a contravention of s. 526, cl. (*8*), will render the trial illegal? *In re* KALI MUDALY (1912) . **I. L. R. 35 Mad. 701**

CRIMINAL TRESPASS.

See PENAL CODE, s. 441.

CROSS-EXAMINATION.

——— of prosecution witnesses—

See CHARGE, CANCELLATION OF.
I. L. R. 39 Calc. 885

——— If a cross examining counsel after putting a paper in the hands of witness merely asks him some questions as to its general nature of identity his adversary will have no right to see the document, but if the paper is used for refreshing the memory of the witness or questions are put respecting its contents or regarding the handwriting, his opponent may claim to see the paper. Taylor on Evidence, *452*, referred to and approved. *In the goods of* GOPESSUR DUTT (1911) . . . . **16 C. W. N. 265**

CRUELTY.

See DIVORCE **I. L. R. 39 Calc. 395**

CUSTOM.

See INSURANCE **I. L. R. 36 Bom. 484**

See KUNJPURA, STATE OF, SUCCESSION TO
I. L. R. 39 Calc. 711

See LANDLORD AND TENANT
I. L. R 34 All. 545

See PRE-EMPTION
I. L. R. 34 All. 434, 542

——— *Inheritance—Customary Law of Punjab—Sheikh Ansaris, Tribe of—Gift by father to daughter—Estate taken by donee—Evidence and proof of custom—Acquiescence and consequent estoppel—Partition by agreement of parties as acquiescence in title of allottees—Limitation Act (XV of 1877), Sch. II, Art. 118—Ineffective adoption—Mahomedan Law.* The appellants claimed possession of the property in suit on the allegation that it was ancestral property to which they were entitled as reversioners. The defence was that the respondent was in possession under a gift from the last owner, a Mahomedan lady, who had adopted him as her heir, and who had herself received the property in dispute as a gift from her father in lieu of her mother's dower, and that the suit was barred by limitation. The parties were Sheikh Ansaris of a Pathan tribe of Punjab Mahomedans; and the appellant's case was that according to a custom prevailing in the family no woman could take by gift a greater interest in ancestral property than an estate for life, and without power of alienation, and that the gift to the respondent was therefore void. In dismissing the appeal from the Chief Court of the Punjab: *Held*, by the Judicial Committee, on the documentary evidence as to the course of litigation concerning the property, and the circumstances connected with its devolution since 1847, and on the other evidence in the case, that not only had no such custom as alleged, applying to the family, been proved, but the evidence relating to the

CUSTOM—*concld.*

devolution of the property was inconsistent with the existence of such a custom, and in fact disproved it: nor was it supported by evidence as to the limited rights by custom of a widow in her deceased husband's property, nor by evidence of a custom preventing a Mahomedan father from giving his property to one son to the exclusion of another. *Held*, also, that there was strong evidence of the appellant's acquiescence in the respondent's title, in the fact that in 1895-96 the principal lands which had been held in undivided shares by the parties were by agreement partitioned, each having allotted to him lands which represented his share; and that the respondent's share on the partition represented lands which had come to him from the gift which the appellants now disputed as being void *Semble*: That the omission to bring within the period prescribed by Art 118 of Sch II of the Limitation Act (XV of 1877) a suit to obtain a declaration that an adoption was invalid or never in fact took place, was no bar to a suit like the present for possession of property. *Tirbhuwan Bahadur Singh* v. *Rameshur Bakhsh Singh, I. L. R. 28 All 727; L. R 33 I. A. 156*, followed. Under the general Mahomedan law an adoption cannot be made: and even if it be made, can carry with it no right of inheritance MUHAMMAD UMAR KHAN *v.* MUHAMMAD NIAZ-UD-DIN KHAN (1911)
I. L. R. 39 Calc. 418

CUSTOMARY LAW OF THE PUNJAB.

See CUSTOM **I. L. R. 39 Calc. 418**

CUSTOMARY RIGHT

See MAHOMEDAN LAW—PRE-EMPTION.
I. L. R. 39 Calc. 915

CYPRES DOCTRINE.

See LIMITATION ACT, 1877, SCH. II, ART. 123 . . **I. L. R. 36 Bom. 111**

D

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——— preparation to commit—

See MAGISTRATE . **I. L. R. 39 Calc. 119**

DAMAGE.

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DAMAGES

Col.

1. SUIT FOR DAMAGE—
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DAMAGES—*contd.*

——— measure of—

See CONTRACT . **I. L. R. 39 Calc. 568**

——— suit for—

See "SHAWLS," MEANING OF **I. L. R. 39 Calc. 1029**

1. SUIT FOR DAMAGE.

(*a*) BREACH OF CONTRACT.

——— *Penalty or liquidated damages—Test—Contract, breach of—Damages real but difficult to assess and prove—Stipulation in contract to pay a liquidated sum as damages for breach when reasonable to be enforced—Language used if material—Plaintiff if should be asked to prove actual damage—Contract, interpretation—Language used by merchants in their trade, interpretation of.* Plaintiff and defendant, who were partners in a business of exporting and selling tea grown upon certain estates belonging to the defendant, in 1895 dissolved their partnership by a deed in which it was stipulated, *inter alia*, that for 10 years after the 30th July 1896, when the plaintiff took over the whole business, the defendant should sell the whole or any part of the crops grown on the said estates to the plaintiff at a valuation so long as the plaintiff should pay to the defendant yearly a sum of £75 for the use of the names of the defendant's estates and should express his intention of purchasing the whole or any part of the crops, and that "if the defendant should fail or neglect or refuse to sell the whole or any part of the crops of the defendant's estates as above provided, defendant should pay to the plaintiff the sum of £500 as liquidated damages and not as a penalty" The defendant having in the first half of the year 1906 sold to other persons five parcels of tea amounting in the aggregate to 53,315 lbs. without offering the plaintiff's the option of buying the same, the plaintiff sued the defendant for £500 as liquidated damages in respect of this breach The defendant having contended that the stipulation was by way of penalty: *Held*, that whatever the expression used in the contract in describing such a payment, the question must always be whether the construction contended for renders the agreement unconscionable and extravagant when made and one which no Court ought to allow to be enforced. That, in this case, it was impossible for the parties when making the contract to foresee the extent of the injury which might be sustained by the plaintiff on breach, that it was obvious that sales in breach of the contract would seriously affect his business, and that having regard to the very uncertainty of the loss likely to arise and to the fact that damages of this kind, though very real, might be difficult of proof and that the proof might entail considerable expense, it was most reasonable for the parties to agree beforehand as to what the damages should be. *The Clydebank Engineering Company, Limited* v. *Don Jose Castaneda*, [1905] *A. C. 6*, followed.

DAMAGES—*contd*

1. SUIT FOR DAMAGE—*contd.*

(*a*) BREACH OF CONTRACT—*concld.*

That the payment stipulated was by way of liquidated damages fixing once for all the sum to be paid and not merely a penalty covering the damages though not assessing the same; and the plaintiff, under the circumstances, could not be called upon to adduce evidence of damage actually sustained by him. That the parties to the agreement were merchants using language in the sense in which it is used in their trade, and the expression "part of the crop" did not mean parcels which might be sold over a grocer's counter but parcels such as were in fact sold in the present case. Nor was it intended that if successive parcels forming parts of the same crop were sold a right to claim £500 in respect of each sale would accrue. ROWLAND VALENTINE WEBSTER *v.* WILLIAM DAVID BOSANQUET (1912) . . **16 C. W. N. 697**

(*b*) TORT.

1. ——— **Conspiracy**—*Conspiracy, suit for damages for—Conspiracy provision relating to in the Indian Penal Code, if excludes civil action for other conspiracies—Common unlawful object—Arrest of father by Magistrate and Police officers to induce son to confess to a crime—Motive, difference in, amongst persons so conspiring not material—Special damage, to what extent to be proved, in suit for damages from conspiracy—Malacious prosecution by joint tort-feasors and conspiracy, different causes of action for—Limitation—Limitation Act (XV of 1877), Sch II, Arts. 23, 36, 120—Standard of proof for actionable conspiracy, if same as for criminal offence—Assessment of damages—Civil Procedure Code (Act V of 1908), s 80—Notice of suit to Government officer acting in bad faith if necessary—Professional ethics—Counsel, retained by party, if may be examined as witness—Criminal Procedure Code (Act V of 1898), ss 154, 172—First information, proper recording of, by Police—"Case diaries," proper recording of, by investigating officer—Evidence Act (I of 1872), ss. 157, 158—First information report, use of, to corroborate or impeach informant—Explosive Substances Act (VI of 1908), s. 5—Bomb found in joint family residence, who may be held responsible for, possession whose—Jail Code, rules in operation of* The law does not permit of a man being arrested in order to put pressure on his son to confess even if the person causing the arrest believed that by so doing he will get evidence that will lead to the conviction of persons engaged in a huge conspiracy. Where three persons were found to have acted in concert in having a man arrested with that object, the fact that two of them did not believe the story upon which the charge against the son was based to be true whilst the third believed in its truth was no ground for the exemption of the latter from liability for damages resulting to the father from the conspiracy, for the motive of one conspirator may be different from that of the others. The

DAMAGES—*contd.*

1. SUIT FOR DAMAGE—*contd.*

(*b*) TORT—*contd.*

standard of proof of a conspiracy in a suit for damages resulting therefrom is not in India the same as if the defendants were being tried on a criminal charge. *In the goods of Gopessur Dutt* (Unreported), relied on. A suit for damages resulting from a conspiracy which would be indictable at Common Law lies in British India according to the principles of justice, equity and good conscience, and the Indian Penal Code, by providing for only one form of criminal conspiracy, *viz*, to wage war against the King, cannot be considered to have taken away this civil remedy either expressly or by necessary implication. *Quinn* v *Leathem*, *[1901] A. C. 495*, followed. A suit brought on a conspiracy must be kept strictly to the cause of action that has been set out in the plaint. If a conspiracy is, as in this case, indictable at Common Law, it gives rise to civil liability if damage has been occasioned by it to the plaintiff The present suit being based on two causes of action, *viz.*, (i) to recover the damage occasioned to the plaintiff as the result of an actionable conspiracy; and (ii) to recover damages for malicious prosecution against the defendants as joint tort-feasors: *Held*, that the suit though instituted beyond the period of limitation provided for suits for compensation for malicious prosecution was, in regard to the first mentioned cause of action, not barred by limitation, as it was brought within the period provided by Art. 36 or Art. 120 of the Limitation Act, the former article being applicable to the matter, and if it did not apply the latter being applicable. Damage to a substantial amount should be proved by the plaintiff in order to establish a cause of action for conspiracy, though if substantial damage is proved the damages awarded need not be limited to the precise amount proved. *Held*, that the plaintiff should recover the amount he had to spend owing to his arrest, such damage not being too remote. A public officer sued in respect of an act done in bad faith is not entitled to notice under s. 80, Civil Procedure Code. *Shahunshah Begum* v *Fergusson*, *I. L R. 7 Calc 499*, *Raghubans* v *Phool Kumari*, *I. L R 32 Calc. 1130*, *Muhammad* v. *Panna*, *I. L. R. 26 All. 220*, relied on It is not the law that evey person in a joint Hindu family should, merely on the ground that a bomb is found in the joint family residence, be liable to be imprisoned and tried for an offence under the Explosive Substances Act, s. 5. If the article is found in a portion of the house of which one member of the family has the exclusive use, such member must *primâ facie* be held responsible for anything that is found there. But if the article is found in a portion of the house of which all the members of the family have use then *primâ facie* the *karta* of the family is responsible. But in either case it is only a presumption which may be rebutted and if the Police act on the information, which they believe, showing that the article found in a house is in the exclusive possession of one member of the family and the articles is found in a portion of the joint family residence of which all the members of the family have the use, then the head of the family is not liable to arrest merely on the ground that the article is found in a portion of the house to which all the family can resort *Queen-Empress* v. *Sangam Lal*, *I. L. R. 15 All. 129*, relied on. The Rules contained in what is known as the Jail Code are rules framed by the Local Government under the powers contained in the Prisons Act and subsequently sanctioned by the Governor-General in Council Rules when so framed and approved have the same force as the Statute, and it is not open to any person to set aside the provisions of such rules. A careful and accurate record of the first information has always been considered as a matter of the highest importance by the Courts in India, the object of the first information being to show what was the manner in which the occurrence was related when the case was first started. *Emperor* v. *Kampu Kuki*, *11 C. W. N. 554*, referred to. As the first information can be used in evidence under ss. 157 and 158 of the Evidence Act to corroborate or impeach the testimony of the person lodging the first information such a document becomes valueless if drawn up by some person other than the proper informant. As the first information in this case which related to a charge of criminal conspiracy at Midnapore was drawn up by a police officer employed in the Criminal Investigation Department in Calcutta and settled by an attorney: *Held*, that it was of no value. The object of recording "case diaries" under s. 172, Criminal Procedure Code, is to enable Courts to check the method of investigation by the Police, and this object was defeated in this case as the provisions of the law for recording "case diaries" from day to day had been deliberately disobeyed by the Police during the most important period of the investigation. *Queen-Empress* v. *Mannu*, *I. L. R 19 All. 390*, referred to. PEARY MOHAN DAS *v.* D. WESTON (1911)

16 C. W. N. 145

2. _____ *Malicious abuse of civil process, if and when actionable—Decree, invalid execution under erroneous belief in its validity—Trespass, actionable without proof of malice and want of reasonable cause—Want of reasonable and probable cause, if question of law—Second appeal—Damages for trespass—Principle of assessment—Exemplary and nominal damages—Limitation Act (IX of 1908), if creates rights to sue.* Where there has been arrest of person or seizure of property in consequence of a civil action which is unfounded, vexatious and malicious, an action for damages may lie against the plaintiff. Whether there was reasonable or probable cause is a mixed question of fact and law and the High Court in second appeal though bound to accept the facts found is en-

DAMAGES—*contd.*

1. SUIT FOR DAMAGE—*contd.*

(*b*) TORT—*contd.*

titled to examine whether the inference drawn from those facts is legitimate. If a litigant executes any form of legal process which is invalid for want of jurisdiction, irregularity or any other reason, and in so doing he commits any act in the nature of trespass to person or property, he is liable therefor in an action of trespass; it is not necessary to prove any malice or want of reasonable or probable cause Where therefore the defendant had obtained an attachment of the property of the plaintiff under an erroneous impression that he had a decree capable of execution, the defendant was liable to be sued by the plaintiff for damages for trespass. *Clissold* v. *Cratchley*, [*1910*] *2 K. B. 244*, followed. Where land with standing crop on it was attached by the defendant in execution of a decree which he erroneously believed he held against the defendant, but the plaintiff did not ask the direction of the Court or make any the slightest effort for the protection of the crop, which in consequence deteriorated and ultimately became valueless. *Held*, that the attachment was not the proximate cause of the loss of the crop, and the defendant could not be made liable for the value of the crop. The plaintiff was also not entitled to recover the amount she had to pay to the pleader whom she employed to search the records and ascertain whether there was a valid decree against her in favour of the defendant. For an act of trespass for which no blame attached to the defendant he could not be held liable to pay exemplary damages. Only nominal damages (which is not necessarily small damages) should be allowed in recognition of the fact that there has been an infraction of a legal right which is actionable without proof of actual damage or harm. BISHUN SINGH *v.* A. W. N. WYATT (1911) . . . **16 C. W. N. 540**

3. ——— *Wrongful attachment, suit for damages for—Want of reasonable and probable cause and malice must be proved—Malice, what amounts to—Special damage, proof of, amount of.* In a suit for damages for attachment before judgment, the plaintiff is bound to prove want of reasonable and probable cause for applying for attachment and malice in fact. The provisions of s. 95 of the new Code of Civil Procedure and s. 491 of the old Code which empowered Courts to award compensation when the attachment was applied for on insufficient grounds, were not intended to affect the applicability of the aforesaid rule of law, in regular suits brought for compensation. Malice means any improper or indirect motive, *i.e.*, some motive other than the one which should actuate the party. No hatred or enmity is required. Where the motive for the attachment is not to defeat any intended fraud on the part of the debtor, but to enforce speedy payment, it will amount to malice. The plaintiff in such a suit must prove special damage. It is not necessary however to show pecuniary loss, or that the plaintiff was affected in a specific manner. It will be sufficient if it is shown that the allegations made against him, must damage his reputation and credit. It will be sufficient if the plaintiff must have sustained some damage such as the law takes notice of. *Quartz Hill Gold Mining Company* v. *Eyre*, *11 Q B. D 674*, referred to. *Kumarasami Pillai* v. *Udayar Nadan*, *I. L. R. 32 Mad 170*, followed. The fact that the defendant is a man of slender means ought not to be taken into consideration as a ground for reducing the amount awardable as damages to the plaintiff. NANJAPPA CHETTIAR *v.* GANAPATHI GOUNDEN (1912) . . . . **I. L. R. 35 Mad. 598**

DEBT.

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See HINDU LAW—ENDOWMENT.

See LAND ACQUISITION.
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——— *Presumption, conditions of—If may be made in favour of an illegal transaction—Debutter lands, intention to create permanent tenancy of, if may be presumed.* A presumption in favour of a transaction assumes its regularity: it cannot be made in favour of that which offends legal principle. Where lands are *debutter*, to create a permanent tenancy at a fixed rent under it would be a breach of duty in the shebait and an intention in the shebait to create such tenancy is not therefore presumable. SATYA SRI GHOSHAL *v.* KARTIK CHANDRA DAS (1912)
16 C. W. N. 418

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See RAILWAYS ACT (IX OF 1890), S. 75.
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See CIVIL PROCEDURE CODE, 1882, SS. 287, 293 . I. L. R. 36 Bom. 329

See CIVIL PROCEDURE CODE, 1908, SS. 47, 73, O. XXI, R. 55 I. L. R. 36 Bom. 156

See CIVIL PROCEDURE CODE, 1908, S. 48. I. L. R 36 Bom. 368, 498

See CIVIL PROCEDURE CODE, 1908, O. XXI, R. 16 . I. L. R. 36 Bom. 58

See HINDU LAW—DEBT. I. L. R. 36 Bom. 68

See IDOL . I. L. R. 36 Bom. 135

See LIMITATION ACT (IX OF 1908), SCH. I, ART. 179 . I. L. R. 36 Bom. 638

See PARTITION . I. L. R. 34 All. 493

See PARTITION, SUIT FOR. I. L. R. 36 Bom 550

See SHEBAIT . I L R. 39 Calc. 887

——— form of—

See CIVIL PROCEDURE CODE (1908), O. XXI, R. 35 . I. L. R 34 All. 150

See EASEMENT . I. L. R. 39 Calc. 59

——— for money—

See EXECUTION OF DECREE. I. L. R. 39 Calc. 298

——— of Appellate Court—

See MORTGAGE . I. L. R. 39 Calc. 925

1. CONSTRUCTION.

——— *Order dismissing an appeal for default—Appeal from such an order—Civil Procedure Code (Act V of 1908), s. 2, sub-s (2); O. XLI, r. 17.* An order dismissing, for default, an appeal under O. XLI, r. 17 of the Code of Civil Procedure, is not a " decree " within the meaning of s. 2 of the Code, and as such is not appealable. *Radha Nath Singh* v. *Chandi Charan Singh, I. L. R. 30 Calc. 660, Ramchandra Pandurang Naik* v. *Madav Purushottam Naik, I. L. R. 16 Bom. 23. Pohkar Singh* v. *Gopal Singh, I. L. R. 14 All. 361,* referred to. RUKMINIMAYI DASI *v* PARAN CHANDRA BHERA (1910) I. L. R. 39 Calc. 341

2. ALTERATION OR AMENDMENT.

——— *Decree, amendment of—Clerical or arithmetical mistake—Whether successive applications for amendment of decree maintainable—Civil Procedure Code (XIV of 1882), ss. 13, 206—Inherent power of Court.* A Court is competent to entertain successive applications for amendment of clerical or arithmetical mistake in a decree, or of error arising therein from any accidental slip or omission. Such applications for amendment of a decree are not barred by the rule of *res judicata.* But if an application for amendment has been heard and disposed of on the merits, a subsequent application may not be maintained in the same matter, and it may be barred upon general principles of law. The power to amend a decree so as to correct a clerical or arithmetical mistake therein, or an error arising from an accidental slip or omission, is inherent in every Court and may be exercised at any time the error, is discovered, although the Court cannot exercise such power unless the error is of the description mentioned in s. 206 of the Code of 1882. LANGAT SINGH *v.* JANKI KOER (1911) I. L. R. 39 Calc. 265

DECREE—*concld.*

2 ALTERATION OR AMENDMENT—*concld.*

3. RESTITUTION OF, ON REVERSAL.

——— *Execution—Appeal—Surety-bond for restitution—Suit.* Where a bond is passed as security for restitution in the event of the decree being reversed in appeal, a suit based upon such bond can be maintained. MOTILAL VIRCHAND *v.* THAKORE CHANDRASANGJI (1911) I L. R. 36 Bom. 42

DECREE IN FORECLOSURE.

See MORTGAGE I. L. R. 39 Calc. 925

DEFENCE.

See HABEAS CORPUS I. L. R. 39 Calc. 164

DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879).

See CIVIL PROCEDURE CODE, 1908, S. 11. I. L. R. 36 Bom. 548

——— S. 2.

1. ——— *Agriculturist—Definition—Sources of income—Agriculture—Scholarship or stipend received by a student is not income from non-agricultural sources* The income from agricultural sources of two brothers was Rs. 250 a year. They had two houses which yielded as rent Rs. 30 a year. One of the brothers held a scholarship of Rs. 15 a month ; and the other received a stipend of Rs. 7 a month at a training college. The money they thus received from non-agricultural sources amounted to Rs. 294. A question having arisen whether they were agriculturists within the meaning of s. 2 of the Dekkhan Agriculturists' Relief Act (XVII of 1879) : *Held,* that the brothers were agriculturists, for the money they received either as scholarship or stipend were mere bounties. PARVATIBAI *v.* YESHVANT KRISHNA (1911) I. L. R 36 Bom. 199

2. ——— *Agriculturist—Definition—Son of agriculturist is not an agriculturist* The minor son of an agriculturist who is depending for his support on his father is not an agriculturist within the meaning of s. 2 of the Dekkhan Agriculturists' Relief Act (XVII of 1879). Dependence for livelihood upon another who is an agriculturist is not the same thing as earning livelihood for oneself by agriculture To earn

DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879)—*contd.*

——— s. 2—*concld.*

livelihood by agriculture is to obtain means of livelihood by it. DAGDU *v* MIRASHEB (1912) **I. L. R. 36 Bom. 496**

3. ——— *Agriculturist—Definition—Gosavis—Earning livelihood by mendicancy and also from agriculture.* The plaintiffs who were Gosavis had no lands of their own at the date of the suit, but purchased some thereafter They were following two occupations, one that of Gosavis, and the other that of agriculture. On a claim made by them to be agriculturists within the meaning of the term as defined in the Dekkhan Agriculturists' Relief Act, 1879 : *Held,* that the plaintiffs were not agriculturists, for they adduced no proof to bring themselves under the first part of the definition, and they could not take advantage of the second branch inasmuch as they being Gosavis, the presumption would be that their ordinary occupation was that of mendicancy SAVALPURI *v.* BALA VALAD YADAOSHET (1912) **I. L. R. 36 Bom. 543**

4. ——— **Expl. (b)**—*Agriculturist—Grant of a village as service vatan—Construction—Grant of revenue and not of soil—Holders not agriculturists.* Where a Sanad evidencing grant of a village as service vatan did not go the length of granting anything more than a share of the revenue and provided that in certain cases the grant may be converted into private property, which had not been done, and a question having arisen as to whether the grant was one of soil and whether the holders were agriculturists within the meaning of the Dekkhan Agriculturists' Relief Act (XVII of 1879) : *Held,* that the grant was a grant of a share of the revenue and not a grant of the soil and did not entitle the holders to be considered agriculturists in view of explanation (*b*) to s. 2 of the Dekkhan Agriculturists' Relief Act (XVII of 1879). CHUNILAL JAMNADAS *v.* BHANUMATI (1911) **I. L. R. 36 Bom. 151**

——— s. 10A—*Written instrument—Oral evidence to vary the terms—Enactment relating to procedure—Retrospective effect—pending proceedings—Suit—Appeal.* The law embodied in s 10A of the Dekkhan Agriculturists' Relief Act (XVII of 1879) is one of procedure, and being retrospective in effect applies to pending proceedings whether in a suit or an appeal. GOPAL GHELA *v* RAJARAM AMTHA (1911) . . **I. L. R. 36 Bom. 305**

——— ss. 39, 48—*Conciliation—Time taken up in conciliation proceedings—Exclusion of time—Limitation.* The plaintiff sued on a promissory note dated the 12th of June 1905. He first applied on the 23rd May 1908 for a conciliator's certificate under s. 39 of the Dekkhan Agriculturists' Relief Act, 1879, and obtained it on the 31st August 1908. Then, on the 10th September 1908, both he and the defendant made a joint application for conciliation. The conciliator held that the first certificate that he had granted had become useless, and gave a fresh certificate on the 3rd December 1908. The suit was brought on the 11th December 1908. It was contended that the suit was barred by limitation *Held,* that the suit was within time, inasmuch as the whole proceeding from the 23rd of May 1908 to the 3rd of December 1908, was one and continuous, and that period should be excluded under s. 48 of the Act. DEVIDAS *v* VITHALDAS (1911) . . . . **I. L. R. 36 Bom. 183**

DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879)—*concld.*

——— ss. 39, 48—*concld.*

——— ss. 47 and 48—*Transfer of Property Act (IV of 1882), s. 85—Limitation Act (IX of 1908), s. II, Art 11—Agriculturist mortgagor—Suit—Conciliator's certificate—Mortgagor necessary party along with other persons interested—Exclusion of time spent in obtaining Conciliator's certificate—Limitation.* Defendants 1 and 2 brought a suit on a mortgage against defendant 3 and while the suit was pending, defendant 3 mortgaged the same property, namely, a house along with other properties to the plaintiffs Defendants 1 and 2 having obtained a decree, they applied for execution and sought to recover the decretal debt by sale of the house. Thereupon, the plaintiffs intervened and applied that the house should be sold subject to their mortgage lien. The plaintiffs' application being disallowed they brought a suit against defendants 1, 2 and 3 to establish their right founded on their mortgage. The suit was brought within one year of the order rejecting their application after the exclusion of the time taken up in obtaining the Conciliator's certificate under ss. 47 and 48 of the Dekkhan Agriculturists' Relief Act (XVII of 1879), defendant 3 being described in their mortgage as an agriculturist. Defendants 1 and 2 contended that defendant 3 being not a necessary party, the Conciliator's certificate was unnecessary and the suit was time-barred. *Held,* that under the provisions of the Transfer of Property Act (IV of 1882) defendant 3 was a necessary party to the suit which was brought on the strength of the mortgage and he being an agriculturist, the Conciliator's certificate was necessary and the suit was, therefore, not time-barred. EKNATH PANDOBA *v* DAGADURAM (1912) . . . **I. L. R. 36 Bom. 624**

DELIVERY OF GOODS.

See CARRIERS . **I. L. R. 39 Calc. 311**

DEPOSITION.

——— **taken in absence of accused—**

See HABEAS CORPUS.
I. L. R. 39 Calc. 164

DEPUTY MAGISTRATE.

——— **in charge of the district—**

See MAGISTRATE, JURISDICTION OF.
I. L. R. 39 Calc. 1041

DESHGAT INAM.

See FORFEITURE **I. L. R. 36 Bom. 539**

DEUR, RAJAH OF.

See SANAD . I. L. R. 36 Bom. 639

DIGWAR.

——— position of—

See LANDLORD AND TENANT
I. L. R. 39 Calc. 696

DIGWARI TENURE.

See LANDLORD AND TENANT
I. L. R. 39 Calc. 696

DISCHARGE OF ADMINISTRATOR.

——— order of—

See ADMINISTRATOR PENDENTE LITE
I. L. R. 39 Calc. 587

DISORDERLY HOUSES ACT (II OF 1907, E. B. AND ASSAM).

——— ss. 2, 7—*House, use of, as brothel or for habitual prostitution—S. 7, object of—Order under cl.* (b) *of s 2, effect of—Proceedings under, how instituted—Criminal Procedure Code, s. 190.* S 7 of Act II of 1907 (E. B and Assam) is an enabling section and is not a necessary part of the procedure of the Act prior to the prosecution being instituted. It is not necessary to have recourse to that section if the Magistrate can be satisfied in other ways that the nuisance complained of is continuing. S. 6 of the Act creates an offence under a local law and proceedings relating to such offence should be taken under s. 190 of the Criminal Procedure Code. Where a Magistrate authorised an Inspector of Police to enter and inspect the houses and the Inspector asked the Sub-Inspector to make the enquiry: *Held*, that the Magistrate had no jurisdiction to take cognizance of the case on the Sub-Inspector's report. The Magistrate could either treat the Sub-Inspector's report as a complaint under s. 190 (*a*), in which case he would have to call upon the Sub-Inspector to appear and substantiate the report on oath; or under s. 155 direct the Police to investigate the case and submit a charge-sheet if they thought proper. Where the Sub-Inspector stated in his report that he was satisfied that a woman "was going on with her profession of prostitution" but did not say that she was using her house to the annoyance of the inhabitants of the vicinity: *Held*, that although the report might furnish a basis to the Magistrate to call upon the Sub-Inspector to depose on oath as complainant, the report itself did not disclose a complete case under s. 2 of the Act. FEROJA PESHAKAR *v.* AMIRUDDIN (1912)
16 C. W. N. 1049

DISPUTE CONCERNING EASEMENT.

——— *Right of passage of surplus water through an ál—Jurisdiction of Magistrate to direct an opening in the ál to be made by a party, and, on failure, by the Police—Criminal Procedure Code (Act V of 1898), s. 147.* The Magistrate has

DISPUTE CONCERNING EASEMENT —*concld*

jurisdiction, under s 147 of the Criminal Procedure Code, on being satisfied that a party has a right to have an opening in an *ál*, for the purpose of draining off the surplus water from his lands, and that he has exercised the right for several years, and also on the last occasion, when it was exercisable, to pass an order requiring the opposite party to make the opening within a reasonable time from its date, and, on his failure to do so, directing the Police to make the same. *Dowlat Koer* v. *Siva Pershad Pandit, 12 Ind Cas. 615 Pashupati Nath Bose* v. *Nando Lal Bose, 5 C. W. N. 67*, and *Lalit Chandra Neogi* v. *Tarini Pershad Gupta, 5 C. W. N. 335*, followed *Dalmir Puri* v. *Khodadad Khan, I. L. R. 36 Calc 923*, distinguished *In re Lindsay, I. L. R 4 Mad 121*, not followed AMBICA PRASAD SINGH *v.* GUR SAHAY SINGH (1912)
I. L. R. 39 Calc. 560

DISPUTE CONCERNING LAND

——— *Likelihood of breach of the peace—Jurisdiction of Magistrates—Criminal Procedure Code (V of 1898), ss. 107, 145.* There is no conflict between ss. 107 and 145 of the Criminal Procedure Code. The fact that there is a dispute concerning land, likely to cause a breach of the peace, does not deprive a Magistrate of jurisdiction under s. 107 of the Criminal Procedure Code, where he is informed that any person is likely to commit a breach of the peace or disturb public tranquility or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquility. Whether, after proceeding under s. 107 of the Criminal Procedure Code, it will be proper for Magistrate to act under s. 145 of the code, must depend on the circumstances of each case as it arises, *viz.*, whether likelihood of a breach of the peace continues or not The competence of the Magistrate to proceed under s. 107 of the Code against persons not in possession must depend upon whether as against those persons the conditions specified in the section have been established. EMPEROR v. ABBAS (1911)
I. L. R. 39 Calc. 150

DISQUALIFIED PROPRIETOR

——— manager of—

See MAHOMEDAN LAW—PRE-EMPTION.
I. L. R. 39 Calc. 915

DISTRICT JUDGE.

——— powers of—

See BENGAL, N.-W. P., AND ASSAM CIVIL COURTS ACT (XII OF 1887), SS. 8, 21.
I. L. R. 34 All. 205

See TRANSFER . I. L. R. 39 Calc. 146

DISTRICT MAGISTRATE.

See BOMBAY DISTRICT POLICE ACT, S 42.
I. L. R. 36 Bom. 504

DISTRICT MAGISTRATE—*concld.*

——— jurisdiction of—

See FURTHER INQUIRY.
I. L. R. 39 Calc. 238

DISTRICT MUNICIPAL ACT (BOM. III OF 1901).

——— s. 96, sub. ss. (2), (3) (*a*), (4) (*a*) (ii) and (5)—*Application to Municipality to reconstruct a house, building balconies*—"*Permission note*" *to rebuild the house—Permission to build balconies indefinitely delayed—Building of balconies—Indefinite delay inconsistent with the District Municipal Act (Bom. Act III of 1901).* On the 3rd July 1903 the plaintiff applied to the Ahmedabad Municipality for permission to reconstruct his house, building balconies on its two sides. On the 25th July 1903 the Municipality issued a "permission note" giving the plaintiff permission to rebuild his house and informing him that as regards the building of the balconies his application was placed before the Managing Committee and that until the permission was granted he must not do any work in that respect. The plaintiff not having heard from the Municipality, he built the balconies. On the 4th August 1904 the Municipality called upon the plaintiff to remove the balconies, and his application to the Municipality to reconsider their decision having failed, he brought of suit against the Municipality for an injunction restraining them from removing his balconies. *Held*, that the plaintiff was entitled to succeed. There being no subsisting provisional order referred to in s. 96, sub-s. (*4*) (*a*) (ii) of the District Municipal Act (Bom. Act III of 1901), the plaintiff was entitled to the liberty of proceeding allowed by sub-s. *4*. After the expiry of one month, the order as to the balconies was spent and the plaintiff became entitled to proceed with the proposed work. *Per Curiam* Under the District Municipal Act (Bom. Act III of 1901) an applicant is not be restrained from proceeding with his work merely because a provisional order, which is expressly limited to one month, may have been issued months, or even years, earlier. An order directing indefinite delay is inconsistent with the District Municipal Act (Bom. Act III of 1901). AHMEDABAD MUNICIPALITY *v.* RAMJI KUBER (1911) . . . . **I. L. R. 36 Bom 61**

——— s. 160—*Municipality—Compulsory—Acquisition of land—Compensation—Arbitration—Decision of District Court—Appeal—High Court—Construction of Statutes.* No appeal lies from the decision of a District Court under cl. (*3*) of s. 160 of the Bombay District Municipal Act (Bom. Act III of 1901). Where a statute creates a right not existing at common law and prescribes a particular remedy for its enforcement, then that remedy alone must be followed. *Wolverhampton New Waterworks Co.* v. *Hawkesford, 6 C. B. N. S. 336*, followed. CHUNILAL VIRCHAND *v.* AHMEDABAD MUNICIPALITY (1911) . . . . **I. L. R. 36 Bom. 47**

DIVORCE.

See DIVORCE ACT (IV OF 1869) S 57.
I. L. R. 34 All. 203

——— *Condonation of incestuous adultery—Cruelty, decree of, necessary to revive condoned adultery—Subsequent conduct, without physical violence, causing injury to health.* Where a husband had committed, incestuous adultery which the wife had condoned, and subsequently the husband, without actually using physical violence, was guilty of such treatment and conduct as caused his wife's health to suffer: *Held*, that such treatment amounted to cruelty, and the incestuous adultery had been revived A lesser degree of cruelty is necessary to revive a condoned offence than to found an original charge. *Durant* v. *Durant, 1 Hag. Eccl Rep. 733, Bramwell* v. *Bramwell, 3 Hag Eccl. Rep. 618, Cooke* v. *Cooke 3 Sw & Tr. 126, Ridgway* v. *Ridgway, 29 W. R. (Eng.) 612*, approved and followed. THOMPSON *v.* THOMPSON (1911) . . **I. L. R. 39 Calc. 395**

DIVORCE ACT (IV OF 1869).

——— s. 57.—*Marriage—Remarriage of petitioner in divorce proceedings within six months of the decree becoming absolute.* Where the successful petitioner in a suit for dissolution of marriage entered into a second marriage within six months of the decree for dissolution of marriage becoming absolute, it was *held* that the second marriage was void. *Warter* v *Warter, L. R. 15 P. D. 152; 59 L J. P. & M. 87*, followed. JACKSON *v.* JACKSON (1911) . . . . **I. L. R. 34 All. 203**

DOCUMENTS.

See SANAD, CONSTRUCTION OF.
I. L. R. 36 Bom. 639

DRUGS.

See EXCISABLE ARTICLES.
I. L. R. 39 Calc. 1053

E

EASEMENT.

——— **Light and air**—*Ancient lights, infringement of—Limitation Act (IX of 1908), s. 26, scope of—Nuisance—Measure of right—Previous enjoyment—Interlocutory Injunction, technical breach of—Inquiry as to damage, refusal of—Form of decree—Costs.* An action for the infringement of the easement of light and air, is founded not on trespass, but on nuisance. To amount to an actionable nuisance, the interference, in the case of a house suitable for residence and business purposes, where the selling and letting value has not been diminished, must cause a sensible privation of light and air, sufficient to render the occupation of the house uncomfortable and to a sensible degree less fit for the purposes of business. In an action for infringement, the character of the previous enjoyment of the dominant tenement must be taken into consideration, but it does not furnish

EASEMENT—*concld.*

the decisive measure of the "unlawful hurt or annoyance." *Colls* v. *Home and Colonial Stores, Ld*, [*1904*] *A. C. 179, Kine* v. *Jolly*, [*1905*] *1 Ch. 480, Higgins* v. *Betts*, [*1905*] *2 Ch. 210*, considered. *Bagram* v. *Khettra Nath Karformah, 3 B L. R. (O. C.) 18, Modhoosoodan Dey* v. *Bissonauth Dey, 15 B. L R. 361*, and *Delhi and London Bank* v. *Hem Lall Dutt, I. L. R. 14 Calc. 839*, referred to. To determine whether a nuisance has been proved, the existing state of things must be considered, but subject to the qualification that light and air coming from other sources, to which a right has not been acquired by grant or prescription, ought not to be taken into account. *Colls* v. *Home and Colonial Stores, Ld.*, [*1904*] *A. C. 179, Jolly* v. *Kine*, [*1907*] *A. C. 1*, and *Kine* v. *Jolly*, [1905] *1 Ch. 480*, followed. PAUL *v.* ROBSON (1911) **I L. R. 39 Calc. 59**

EJECTMENT.

See CANTONMENT TENURE. **I. L. R. 36 Bom. 1**

See LANDLORD AND TENANT—EJECTMENT. **I. L. R. 39 Calc 903**

See UNDER-RAIYAT **I. L. R. 39 Calc. 278**

——— **suit for—**

See CIVIL PROCEDURE CODE, 1882, s. 539. **I. L. R. 36 Bom. 29**

ELECTION.

See MUNICIPALITY **I. L. R. 34 All. 649**

ELEPHANT.

——— *Nature and extent of liability for damage done by elephant—An elephant belongs to a dangerous class of animals. Liability of owner and person in possession.* It may be laid down as a rule of law that in India the elephant belongs to a dangerous class of animals. A person who keeps an animal belonging to a class that is dangerous takes the risk of any damage it may do. The absolute liability of a person for any harm done by his animal independently of any intent or negligence on his part does not depend on the manner or extent to which such animals are employed, but upon the nature of the class to which such animal belongs or the particular kind of mischief committed. Liability for damage done by an elephant attaches to the owner of the elephant as well as to a person in whose possession the elephant happens to be when it commits such damage. VEDAPURATTI *v.* KAPPAN NAIR (1912) . . **I L. R. 35 Mad. 708**

ENCROACHMENT.

See BUILDING **I. L. R. 39 Calc. 84**

EQUITABLE SECURITY.

See MORTGAGE **I. L. R. 39 Calc. 810**

ERRONEOUS DECISION.

——— **on a question of law—**

See RES JUDICATA **I. L. R. 39 Calc. 848**

ESTATE IN COMMON TENANCY.

See SALE FOR ARREARS OF REVENUE. **I. L. R. 39 Calc. 353**

ESTATES PARTITION ACT (BENG. V OF 1897).

——— **ss. 25, 119**—*Civil suit for declaration of tenancy right where Collector decides against it in partition proceedings—Maintainability—Defect of parties, objection when must be taken.* Where in the course of partition proceedings before the Collector the defendants set up a claim that they were tenants in respect of that land to which the plaintiffs who were some of the joint proprietors objected and the objection was overruled by the Collector: *Held*, that a suit by the plaintiffs for a declaration that there was no tenancy right of the defendants was not barred. LAKHI CHOUDHRY *v.* AKLOO JHA (1911) . . . . **16 C. W. N. 639**

ESTOPPEL.

	Col.
1. ESTOPPEL BY CONDUCT . . .	126
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See CIVIL PROCEDURE CODE, 1882, s. 43. **I. L. R. 34 All. 172**

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See FRAUD . **I. L. R. 36 Bom 185**

See MORTGAGE . **I. L. R. 34 All. 640**

See TRANSFER OF PROPERTY ACT, s. 107. **I. L. R. 36 Bom. 500**

1. ESTOPPEL BY CONDUCT.

1. ——— *Non-transferable occupancy holding—Mortgage of the holding—Purchaser of the holding at private sale—Subsequent lease by landlord to purchaser—Evidence (Act I of 1872), s. 115.* A person, having a raiyati interest in certain lands, mortgaged the same to the plaintiff without the landlord's consent. Subsequently various transfers of portions of the lands mortgaged were effected to different persons by the widow of the mortgagor. Finally, the widow sold a portion of the mortgaged lands with the consent of the landlord to one Radha Kanta Chakravarti, who after his purchase took a fresh lease of the same from the landlord at an enhanced rent on payment of a premium. A suit having been instituted by the mortgagee for recovery of the mortgage money, the widow and all the subsequent transferees, including the purchaser, were made parties The purchaser pleaded that he was not a necessary party to the suit, and that the mortgage was invalid on the ground that the raiyati right was not transferable. The District Judge having decided against him on these points, the purchaser appealed to the High Court: *Held* (COXE, *J*, dissenting), that the purchaser claiming under a title party, at least created by the mortgagor, was estopped

ESTOPPEL—*contd*

1. ESTOPPEL BY CONDUCT—*contd.*

from raising the plea of non-transferability of the holding *Krishna Lal Shaha* v. *Bhairab Chandra Rahat, 9 C W N. ccxlviii, Asmatunnessa Khatun Saheba* v. *Harendra Lal Biswas, I. L. R 35 Calc. 904, 12 C. W N. 721, Doe* v *Stone, 3 C. B. 176, Doe* v *Vickers, 4 Ad & E 782, Hughes* v. *Howard 25 Beav. 575, Debendra Nath Sen* v. *Mirza Abdul Samed Serajı, 10 C. L. J 150,* referred to RADHA KANTA CHAKRAVARTI *v.* RAMANANDA SHAHA (1912) **I. L. R. 39 Calc. 513**

———————— *Rent free tank—Sanad—No mention of rent in the sanad—Tenants making improvement by re-excavating tanks, effect of—Inference of landlord's intention to grant rent-free right.* In a suit brought by the landlord to recover possession of a tank with its banks, and in the alternative to have the lands assessed with fair rent, the defendant pleaded that the tank had been *niskar* (rent free) from a long time by virtue of a *sanad* granted by the predecessor of the plaintiff. The *sanad* was granted in the year 1850 to re-excavate an unclaimed silted-up tank, by which the grantee was required to excavate the tank by employing earth-cutters, and the only restriction imposed was that the limits of the ancient tank were not to be exceeded. There was no provision for the payment of any rent in the present or future, and nothing was said as to the duration of the grant. The ancestor of the defendant re-excavated the tank at considerable expense, and it has been in the exclusive possession of the family of the defendant from father to son, and still supplies good drinking water: *Held,* that, under the circumstances, the plaintiff was estopped from asserting that the tank with its banks should come under a new liability of which there was no indication in the previous history of the tank and that, therefore, it could not be assessed with any rent. *Held, per* CHATTERJEE, *J.*, that according to Hindu *shastras,* digging new tanks and re-excavation of old ones being supremely meritorious, the ancestor of the plaintiff could never have meant that the grant made by the *sanad* was a mere license; and that the defendant was entitled to hold the tank with its banks without payment of rent as long as the tank served the purpose for which the grant was made. The possession of a party basing his title on a grant, and not on adverse possession as an alternative source of title, cannot be used for any purpose other than for explaining the grant on which he relies. BIRENDRA KISHORE MANIKYA *v.* AKRAM ALI (1912)

I. L. R. 39 Calc. 439

———————— *Estoppel by conduct—Hindu law—Adoption by Hindu widow under authority of her husband—Subsequent suit to set aside adoption as invalid—Denial of any valid authority to adopt—Adopted son having on faith of representations by widow married, performed shradh of adoptive father and incurred heavy liabilities in maintaining his change of status and privileges.* In this case, which was an appeal from the decision

ESTOPPEL—*contd.*

1. ESTOPPEL BY CONDUCT—*concld.*

of the High Court in *Dharam Kunwar* v *Balwant Singh, I L. R. 30 All. 549,* their Lordships of the Judicial Committee, while expressing their opinion that the question in the case might well be decided as one of fact on the appellant's own statements without recourse to the doctrine of estoppel, did not differ from the view of the High Court as to the applicability of that doctrine. The appellant, they held, had asserted her authority to adopt in the most solemn manner under her hand and seal, and her conduct both before and after that assertion had been of a like unequivocal character. She could not now be allowed to change her story without grave injustice ensuing to the respondent, who had acted in reliance upon her deliberate and repeated representations. The estoppel, however, their Lordships said, must be taken as being purely personal, and did not bind any one claiming by an independent title. DHARAM KUNWAR *v.* BALWANT SINGH (1912) . . **I. L. R. 34 All. 398**

4. ———————— *Occupancy holding mortgaged to zamindar and sold in execution of a decree on the mortgage as a fixed-rate holding—Ejectment of purchaser—Right of purchaser to recover possession—Possessory title.* An occupancy holding was mortgaged to the zamindar as a fixed-rate holding; was sold as such in execution of a decree on the mortgage and purchased by a stranger, who remained in possession thereof for some eleven years, paying rent to the zamindar. Subsequently the purchaser was dispossessed by the judgment debtor. *Held,* on suit by the purchaser to recover possession that the defendant was estopped from setting up the plea that the holding was an occupancy holding and that, the defendant having no title at all, the plaintiff was entitled to regain possession on the strength of his possessory title. ASGHAR HUSAIN *v.* PAL AHIR (1912) . . **I. L. R. 34 All. 538**

2. ESTOPPEL AND RES JUDICATA DISTINGUISHED.

1. ———————— *Settlement—Suit by after-born son to set aside settlement—Difference between estoppel and res judicata* Estoppel and *res judicata* are entirely different. *Res judicata* precludes a man averring the same thing twice over in successive litigations, while estoppel prevents him saying one thing at one time and the opposite at another. CASSAMALLY JAIRAJBHAI *v.* SIR CURRIMBHOY EBRAHIM (1911)

I. L. R. 36 Bom. 214

2. ———————— *Res judicata and estoppel distinguished. Res judicata* ousts the jurisdiction of the Court while estoppel does no more than shut the mouth of a party. Estoppel never means anything more than that a person shall not be allowed to say one thing at one time and the opposite of it at another time; while *res judicata* means nothing more than that a person

ESTOPPEL—*concld.*

2. ESTOPPEL AND RES JUDICATA DISTINGUISHED—*concld.*

shall not be heard to say the same thing twice over. BHAISHANKER NANABHAI *v.* MORARJI KESHAVJI & Co. (1911) . . **I. L. R. 36 Bom. 283**

EVIDENCE.

See ACKNOWLEDGMENT. **I. L. R. 39 Calc. 789**

See AGRA TENANCY ACT (II OF 1901) SS. 166, 201 . **I. L. R. 34 All. 250**

See CAUSING DEATH BY RASH OR NEGLIGENT ACT . **I. L. R. 39 Calc. 855**

See CUSTOM . **I. L. R. 39 Calc. 418**

See EVIDENCE ACT (I OF 1872).

See EVIDENCE ACT (I OF 1872), SS. 14, 15. **I. L. R. 34 All. 93**

See EVIDENCE ACT (I OF 1872) S. 69. **I. L. R. 34 All. 615**

See EVIDENCE ACT (I OF 1872), S. 108. **I. L. R. 34 All. 36**

See EVIDENCE ACT (I OF 1872), S. 114. **I. L. R. 34 All. 511**

See GUARANTEE **I. L. R. 36 Bom. 387**

See HABEAS CORPUS. **I. L. R. 39 Calc. 164**

See PARDA-NASHIN LADY. **I. L. R. 34 All. 455**

See REGISTRATION ACT (III OF 1877), SS. 3, 17, 40 . **I. L. R. 35 Mad. 63**

See REGISTRATION ACT (III OF 1877) SS. 32, 33 . **I. L. R. 34 All. 331**

See REGISTRATION ACT (III OF 1877), SS. 32, 66, 75 **I. L. R. 34 All. 253**

See ROAD-CESS RETURNS. **I. L. R 39 Calc. 1005**

See TEISHKHANA PAPER. **I. L. R. 39 Calc. 995**

See THUMB-IMPRESSION. **I. L. R. 39 Calc. 348**

——admissibility of—

See EVIDENCE ACT (I OF 1872), SS 11, 32. **I. L. R. 34 All. 341**

——hearing and recording of—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), S. 263 **I. L. R. 39 Calc. 931**

EVIDENCE ACT (I OF 1872).

See HABEAS CORPUS. **I. L. R. 39 Calc. 164**

—— **ss. 3. 10, 45, 101, 135—**

See PROBATE . **I. L. R. 39 Calc. 245**

EVIDENCE ACT (I OF 1872)—*contd.*

—— **s. 10**—*Documents in possession of one conspirator if admissible to prove complicity of another—Independent proof of complicity if necessary.* What has to be established under s. 10 of the Evidence Act to make documents found in the possession of one of several persons accused of conspiracy admissible against the other accused is that there is reasonable ground to believe in the existence of a conspiracy amongst such persons. It is not necessary for this purpose to establish by independent evidence that they were conspirators. *Queen Caroline's Case, 2 B. & B 302, R. v. Jacobs, 1 Cox, C. C. 173, R. v. Duffield, 5 Cox, C. C. 404, 434,* referred to. PULIN BEHARI DAS *v.* KING-EMPEROR (1911) **16 C. W. N. 1105**

—— **ss. 11. 32**—*Evidence—Admissibility—Statements of deceased persons. Held,* that if the terms of a deposition made by a person since deceased do not fall within the provisions of s. 32 of the Indian Evidence Act, 1872, the provisions of s. 11 of the Act will not avail to make such deposition evidence. BELA RANI *v.* MAHABIR SINGH (1912) . . **I. L. R. 34 All. 341**

—— **ss. 14, 15**—*Indian Penal Code, s. 415—Cheating—Evidence to show instances of cheating other than those charged inadmissible.* A person employed as a clerk in charge of the renewal of licenses for hand-carts received R2 for each such renewal, whereas he ought to have taken R1-14. He was charged with cheating, and evidence was produced showing that he had taken 2 annas in excess from persons other than those named in the charge. *Held,* that such evidence was inadmissible either under s. 14, or under s. 15 of the Evidence Act. *Emperor* v. *Debendra Prosad, I. L. R. 36 Calc. 573,* distinguished. *Empress* v. *M. J. Vyapoory Moodeliar, I L R. 6 Calc. 655,* referred to. EMPEROR *v.* ABDUL WAHID KHAN (1911) . . . **I L. R. 34 All. 93**

—— **s. 21—**

See ROAD-CESS RETURNS. **I. L. R. 39 Calc. 1005**

—— **ss. 25, 27**—*Police deposing to admission of guilt by accused, impropriety of* Where the Police Sub-Inspector in his deposition before the Court stated that one of the accused admitted before him his guilt and that from the statement of that accused he (the Sub-Inspector) could understand the exact nature of the offences committed by the accused: *Held,* that the Sub-Inspector ought never to have been allowed to make such statement before the assessors whose minds must have been considerably prejudiced thereby. PAIMULLAH *v.* KING-EMPEROR (1911) **16 C. W. N. 238**

—— **ss. 25, 114, III. (b) 133 and 157**—*Accomplice, corroboration of—Material particulars, what are—Admissibility of previous statements of accomplice to Inspector of Police—S. 157, "authority legally competent to investigate the fact,"*

EVIDENCE ACT (I OF 1872)—*contd.*

——— **s. 25**—*contd.*

meaning of—Competency of officer of Criminal Investigation Department.—Criminal Procedure Code (Act V of 1898), ss. 162, 154, 155, 157 and 551—Act XIV of 1908—Letters Patent, cls. 25 and 26. On a preliminary objection raised by the Crown with reference to the jurisdiction of the Court: *Held*, that the Letters Patent, s. 26, authorises the grant of a certificate by the Advocate-General in a case tried by a Special Bench appointed under the Indian Criminal Law Amendment Act (XIV of 1908). The following five points of law were raised in the certificate of the Advocate-General in this Letters Patent Appeal, *viz.*:—(i) Does the evidence of an accomplice require corroboration in material particulars before it can be acted upon; is it open to the Court to convict upon the uncorroborated testimony of an accomplice if the Court is satisfied that the evidence is true; and does not the Indian Evidence Act (I of 1872), s. 133, read with s. 114, illustration (*b*), merely intend to lay down that a conviction upon the uncorroboated testimony of an accomplice is not illegal where the presumption of untrustworthiness attaching to the evidence of an accomplice is rebutted by special circumstances? (ii) Can the previous statements of an accomplice legally amount to corroboration of the evidence given by him at the trial? (iii) Is an Inspector of the Criminal Investivation Department an authority legally competent to investigate the fact within the meaning of s. 157, Indian Evidence Act (I of 1872)? (iv) Is a statement of a confessional nature made by a witness to a police officer a confession of an accused person within the purview of s. 25, Indian Evidence Act? (v) While statements made by a person to a police officer in the course of an investigation and taken down in writing may not (by reason of s. 162, Criminal Procedure Code) be proved by the production of the writing, may such statements be proved by oral evidence? *On the first point, Held* (by BENSON, WALLIS and MILLER, *JJ.*) that the evidence of an accomplice need not be corroborated in material particulars before it can be acted upon and that it is open to the Court to convict upon the uncorroborated testimony of an accomplice if the Court is satisfied that the evidence is true. *Per* BENSON, *J.*—In my opinion there is nothing in the illustration (*b*) to s. 114 which overrides or renders nugatory the plain and explicit declaration contained in s. 133 or which requires us to hold that the evidence of an accomplice must always and in all circumstances be regarded as unworthy of credit unless it is corroborated in material particulars or which requires us to hold that it is not open to the Court to act on such evidence even when the Court believes it to be perfectly true. *Per* WALLIS, *J.*—S. 114 of the Indian Evidence Act authorises the Court to make certain presumptions of fact. Nine well-known maxims are there given as illustrations of the section, the second of which is "the Court may presume that an accomplice is unworthy of credit unless he is corroborated in material particulars." They are all presumptions which may naturally arise but the Legislature by the use of the word "may" instead of "shall," both in the body of the section and in the illustrations, shows that the Court is not compelled to raise them but is to consider whether in all the circumstances of the particular case they should be raised. *Per* ABDUR RAHIM, *J.*—It is well-established law that except in circumstances of an especial nature it is the duty of the Court to raise the presumption that accomplices' evidence is unworthy of credit as against the accused persons unless it is corroborated in material particulars and the failure of the Judge to direct the jury to that effect is an error in law. It will none the less be an error in law if the trial was held without a jury and the Judge or the Magistrate misdirected himself on this point and treated an accomplice's evidence like that of any other witness. To my mind it is quite clear from the nature of the cases cited in the illustrations that, except in the special circumstances, examples of which are attached to the section, the Legislature requires that the Court should make the natural presumptions referred to in the section. No doubt there are cases and cases and while in doubtful cases the position contended for on behalf of the Crown may well be sound there is nothing at least in the Indian Evidence Act or in reason that in other cases in which there could be no two opinions that the presumption that an accomplice is unworthy of credit unless corroborated applies in fell force not being either negatived or rebutted an omission to raise the obvious presumption should not be treated as an error in law. On the other hand the illustrations to s. 114 furnish an indication to the contrary. There is no foundation whatever for the suggestion that these provisions are in any respect different from that is laid down in the rulings of the Indian Courts on the subject, either since the passing of the Indian Evidence Act or before it or of the English Courts. *Per* SUNDARA AYYAR, *J.*—Having regard to the condition of the case law in England it would be safe to proceed to determine the law in this country by a consideration mainly, if not solely, of the provisions of the Indian Evidence Act. Judges are entitled to lay down a rule that although the Legislature has given the Court the discretion to make a particular presumption or not according to the circumstances, the proper course for the Courts to follow is to make the presumption unless there be special occasion for not doing so. This does not deprive the Court of the right given by the legislature to exercise its discretion. There may no doubt be circumstances in any particular case which would justify the Court in not making the presumption [in illustration (*b*)]. But I think it would be reasonable to hold that there must be some good reason given for not making the presumption in such a case. I entirely agree with the statement of the law by EDGE, *C.J.*, in *Queen-Empress* v. *Gobardhan*, where after he points out

EVIDENCE ACT (I OF 1872)—*contd.*

——— s. 25—*contd.*

that a jury being bound to convict on the uncorroborated evidence of an approver if they believe it a Judge cannot direct them to acquit the accused in the absence of corroborative evidence, he says: "A Judge would advise a jury that it would be unsafe to act upon, in other words to believe, the uncorroborated evidence of an accomplice as he would advise a jury not to act upon the evidence of any other witness whose evidence might from any cause be open to suspicion. But in either case he would have to tell the jury that if they believed the evidence they might legally convict the prisoner."—With this addition that it is the duty of the Judge to draw the attention of the jury to any circumstance either in favour of or against the credibility of the accomplice. *On the second point, Held* (By BENSON, WALLIS and MILLER, *JJ.*) that the previous statements of an accomplice can legally amount to corroboration of the evidence given by him at the trial. *Per* BENSON, *J.*—I do not think there is anything in the Indian Evidence Act to exclude the evidence of accomplices from the plain and express rule in s. 157, nor can it be suggested that "corroborate" is used in s. 157 in a different sense from that in which it is used in illustration (*b*) to s. 114. The former statement of an accomplice is, therefore, legally admissible to corroborate his testimony at the trial but the weight to be attached to it, or, in other words, how far it does really corroborate the evidence given at the trial must vary with the facts of each case. No hard-and-fast rule, capable of mechanical application, can be laid down In the great majority of cases it would, no doubt, be found to be merely the repetition of tainted evidence affording no ground for believing it to be true, and, therefore, adding nothing whatever to its value. On the other hand, if there was evidence or even a suggestion put forward by the defence that the evidence given by the witness at the trial was the result of recent influences brought to bear upon him, it would be most important to be able to prove that the witness had made statements to the same effect as his evidence at the trial long before the influences relied on by the defence had been brought to bear upon him. If it is necessary in this case to determine whether the phrase "material particulars" in illustration (*b*) to s. 114 is to be regarded, as in some sense, a technical expression implying corroboration by independent or untainted evidence, I am unable to go so far and to say that as a matter of law the previous statement of an accomplice can never amount to corroboration in material particulars. If there are some circumstances in which a prior statement may amount to sufficient corroboration we cannot say as a matter of law that a prior statement can never be corroboration in material particulars though no doubt in the great majority of cases it will be found that the prior statements do not add anything to the credibility of the evidence given at the trial . . . . How far a prior statement does corroborate evidence given

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——— s. 25—*contd.*

at the trial is a matter to be determined by the jury or where there is no jury by the Judge. *Per* WALLIS, *J.*—Previous statements admissible as corroboration under s. 157 of the Indian Evidence Act may or may not amount to sufficient corroboration and whether they will be so or not depends on the facts and circumstances of the particular case. Taken by itself the previous statement may of course be as tainted and untrustworthy as the evidence in the box and not supply any real corroboration; but on the other hand the circumstances in which it was made may afford strong corroboration of its truthfulness apart fom the credibility of the accomplice. *Per* MILLER, *J.*—I see danger and not safety in ruling out as inadmissible in the case of accomplice witness any tests of credibility which are available in the case of other witnesses whether the test applied tends to confirm or to discredit the evidence. *Per* SUNDARA AYYAR, *J.*—The previous statement of an accomplice cannot legally amount to corroboration within the meaning of illustration (*b*) to s. 114 of the Indian Evidence Act. The question whether it is admissible at all as corroborative evidence under s. 157 for any other purpose is not free from doubt. It is possible to hold that it is admissible for proving his consistency and as disproving a suggestion that it was recently concocted by him. But I am inclined to think that it would be dangerous to admit it even for this limited purpose of proving his consistency. To do so would lead to the danger of its being relied on to prove the truth of the evidence also. This is likely to defeat the object of the rule requiring independent evidence of corroboration. The safer rule in my opinion would be to hold that s. 114, illustration (*b*), requires the rejection of the previous statement altogether. *On the third point, Held* (by BENSON, WALLIS and MILLER, *JJ.*) that an Inspector of the Criminal Investigation Department is an authority legally competent to investigate the fact within the meaning of s. 157, Indian Evidence Act. *Per* BENSON, *J.*—I do not think that the words "investigate the fact," in s. 157, of the Indian Evidence Act should be construed in a narrow sense so as to restrict competence to the police officer who under Chapter XIV of the Criminal Procedure Code is charged with the investigation of an offence. *Per* WALLIS, *J*—Ss. 156 and 157 deal with the corroboration of witnesses as to relevant facts and reading the two sections together I think s. 157 should be read thus as if the words in brackets were there "in order to corroborate the evidence of a witness (as to a relevant fact) any former statement made by the witness as to the same fact before any authority competent to investigate the fact may be proved." The Presidency may well be held to be the "local area" to which the seven Inspectors in the department on whom the work of investigation must necessarily fall are appointed. I am inclined to think that the word investigate in s. 157 of the Indian Evidence Act cannot be read as limited to in-

EVIDENCE ACT (I OF 1872)—*contd*

——— s. 25—*contd.*

vestigation under the Code of Criminal Procedure, that the Inspector had been brought down from Madras specially to investigate the murder of Mr. Ashe and that he was not only legally competent but under a duty to investigate and in the course of such investigation to record the statements now in question. *Per* ABDUR RAHIM, *J.*—One would not, in my opinion, be justified in construing s. 157 in a loose general sense having regard to the fact that it permits a statement made in the absence of a party to a proceeding which he had no means of testing to be used in evidence against him. Such departure from the ordinary rule relating to judicial evidence must be confined within the strictest limits. It was argued by the pleaders for the accused that the word investigate in s. 157 in the Indian Evidence Act is used in the technical sense of the Criminal Procedure Code. But this is clearly not so. The application of that section of the Indian Evidence Act is not confined to criminal cases and the word investigate is obviously used in its natural and popular meaning. The Criminal Investigation Department was created to assist the ordinary Police force in the detection of certain crimes and neither that fact nor the fact that a member of the Criminal Investigation Department holds the rank of an Inspector would by itself entitle him to exercise the same powers within the Presidency of Madras as an officer in charge of a police station has within the local limits of his station under s. 157, Criminal Procedure Code *Per* SUNDARA AYYAR, *J.* —Legally competent must I think mean "having power under some law statutory or otherwise." The power need not be derived from an express provision of the law as stated by the majority of the Special Bench if by that expression be meant "some definite statutory enactment" but it must be shown that there is power under some law or other to investigate. The words "authority" and "competent" support this view. S. 21 of the Police Act (XXIV of 1859), which makes it the duty of a police officer to detect and bring offenders to justice cannot be taken to give a police officer all powers necessary for that purpose and therefore power to investigate offences and that every police officer has these powers throughout the Presidency. It is quite impossible to hold that the mere imposition of duties of a comprehensive nature would authorise a person on whom they are imposed to restrain the rights of liberties of individuals or to exercise any specific powers over them. It cannot be inferred that an Inspector of the Criminal Investigation Department has been appointed to any local area under s. 551, Criminal Procedure Code. *On the fourth point, Held* (by BENSON, WALLIS and SUNDARA AYYAR, *JJ.*) that a statement of a confessional nature made by a witness to a police officer is a confession of an accused person within the purview of s. 25, Indian Evidence Act. *Per* BENSON, *J.*—It seems to be especially undesirable to extend the language of s. 25 beyond its plain meaning when the effect of

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——— s. 25—*contd*

doing so might tend to encourage those corrupt practices of the Police in regard to working for confessions which it is the policy of the law to prevent. Effect must be given to the language of s. 25 and it renders the statements of the approvers to the Inspector inadmissible. *Per* WALLIS, *J.*—I think the safer, as it is certainly the simpler, course is to read the words of the section in their natural meaning without putting any restrictive interpretation upon them and so reading them I hold that these confessions were inadmissible even as corroborative evidence, under s. 25 of the Evidence Act. *Per* MILLER, *J.*—Ss. 25, 26 and 27, Indian Evidence Act, were imported into the Indian Evidence Act, from the Criminal Procedure Code of 1861. . . . Those sections of the Code were not dealing with the question of witnesses in criminal trials. . . . I am unable to find any reason for giving the sections (in the Evidence Act) a more extended meaning than they bore in the Code of 1861. I am unable to see that it is more dangerous to allow a witness to be corroborated by a self-incriminating statement made to a police officer than by a self-exculpatory statement to the same effect. *Per* ABDUR RAHIM, *J.*— The word "confession" used in s. 25, Evidence Act, could not have been used in the wide and popular sense in which it is used in every-day conversation as meaning an acknowledgment of some fault for that would make the section ridiculous and there can be little doubt that it is to be understood in the technical sense of the criminal law. Whether a statement is to be called a confession or not depends not merely upon the nature of the statement itself but also on the use which is sought to be made of it. Whenever the evidentiary value of a statement as against the person making it is in question it is then that it would be properly called an admission or confession according as the proceeding in which the question arises is of a civil or criminal nature but not when it is intended to be used as evidence against a third person. *Per* SUNDARA AYYAR, *J.*—The word confession does not import that the admission of guilt should be by a party to the criminal proceeding before the Court. If the word confession in s. 25 was intended to refer only to an admission made by a party to the proceeding before the Court the Legislature would have said so The expression "made by an accused person" in s. 24, Evidence Act, means that the person must be an accused person at the time of the confession. An admission of guilt made to a police officer *by any person* cannot be proved as against *any person accused* of any offence whether he be the person who made the admission or not. *On the fifth point, Held* (*per totam Curiam*), that while statements made by a person to a police officer in the course of an investigation and taken down in writing may not (by reason of s. 162, Criminal Procedure Code) be proved by the production of the writing, they may be proved by oral evidence. Before the High Court has decided any point of law raised

EVIDENCE ACT (I OF 1872)—*contd.*

——— s. 25—*contd.*

in the Advocate-General's certificate, the accused cannot be heard on any point not included in the certificate MUTHUKUMARASWAMI PILLAI *v* KING-EMPEROR (1912) . . I. L. R. 35 Mad. 397

——— ss. 25, 114, Illust. (b), 133, 157—*Criminal Procedure Code, Act V of 1898, ss 154, 155, 157, 162 and 551—Approvers' evidence, corroboration of—Admissibility of previous statements of, to Police Inspector—Value of such statements as corroboration—"Legally competent to investigate," meaning of—Competency of officer of Criminal Investigation Department.* Sir ARNOLD WHITE, *C.J.*, and AYLING, *J.*—It is not the law either in England or India that the evidence of an accomplice must be corroborated in material particulars before it can be acted upon. Where a Court is Judge of fact as well as of law the Court as a Judge of fact is not precluded from considering the question whether the unsupported evidence of an accomplice is true or not. A Court may be warranted in declining to draw the presumption of fact referred to in illustration (*b*) to s. 114, Indian Evidence Act (I of 1872) S. 133, Indian Evidence Act, is the substantive enactment declaring the law whereas s. 114 only lays down certain propositions intended to assist the Courts in drawing inferences of fact. Where the Court is acting in the capacity of both Judge and Jury, it must direct itself and the proper direction would be :—Consider the evidence of the approvers, always bear in mind that it is tainted evidence, scrutinize it with the utmost care, accept it with the greatest caution, consider it in the light of the circumstances in which it is given and in the light of all the other circumstances in the case of which evidence is legally admissible. Then, if you believe it, act on it even if there is not corroboration in the strict sense of the word. If you do not believe it, reject it. *In re Meunier, [1894] 2. Q. B. 415*, approved. *Reg.* v. *Ramasami Padayachi, I. L R. 1 Mad. 394*, approved. What are the "material particulars" referred to in the Indian Evidence Act (I of 1872), illustration (*b*), must depend upon the nature of the charge and the facts of the particular case. Oral testimony of independent witnesses is not necessary. SANKARAN-NAIR, *J.* (*dissentiente*).—The Indian Evidence Act [ss. 133 and 114, illustration (*b*)] embodies the rules of English law that the presumption must first be drawn that the evidence of an accomplice is unreliable, and exceptional circumstances must be proved to justify its acceptance. The question is not whether a conviction based on the uncorroborated testimony of an accomplice is legal but whether there is a presumption that such testimony cannot be accepted without corroboration. A person should not be convicted except under "very special circumstances" upon the uncorroborated testimony of an accomplice. The "special circumstances" are that the grounds on which an accomplice's evidence has been held to be untrustworthy did not either exist in the case or did not exist in their full strength :

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——— s. 25—*concld.*

that there are countervailing considerations of greater weight which diminish or entirely get rid of the weight due to such presumptions. In cases tried by a jury, a jury has to be advised by the Judge of what I have above referred to. The CHIEF JUSTICE and AYLING, *J.*—It cannot be laid down as a proposition of law that previous statements of an accomplice cannot be regarded as corroborative of evidence given by him at his trial. *Reg.* v. *Malapabi Kupana, 11 Bom. H. C. R. 196*, dissented from. SANKARAN-NAIR, *J.* (*dissentiente*).—A previous statement by the accomplice himself or a statement by another accomplice is not the corroboration required under the rule as to material particulars. The CHIEF JUSTICE and AYLING, *J.*—The words "before any authority legally competent to investigate the fact" in s. 157, Indian Evidence Act, are quite general and should not be restricted to police officers and to "investigations" in the technical sense in which the word is used in the Code of Criminal Procedure. The words are competent to investigate not a *case* but "the fact." The words "legally competent" do not mean only competent under some express provision of law. An Inspector of the Criminal Investigation Department has power to investigate in cases to which s. 156, Criminal Procedure Code, applies. As such his "local area" is the Presidency of Madras. SANKARAN-NAIR, *J.* (*dissentiente*).—The police officers entitled to investigate an offence are the police officers referred to in the Code of Criminal Procedure, *i. e.*, a station-house officer (ss. 156, 157), an officer in charge of a police station (ss. 154, 155, cl 1) and police officers superior in rank to an officer in charge of a police station (s. 551). An Inspector of the Criminal Investigation Department is not such an officer and his evidence is not admissible under s. 157, Indian Evidence Act, he not being "any authority legally competent to investigate the fact" under s. 157, Criminal Procedure Code. The CHIEF JUSTICE and AYLING, *J.*—A statement of a confessional nature made to a police officer by a witness is not a confession of an accused person within the purview of s. 25, Evidence Act. S. 25 lays down that such a statement cannot be used against the person making it while on his trial. SANKARAN-NAIR, *J* (*dissentiente*).—The statements of approvers to the Police Inspector being really confessions are inadmissible in evidence against the accused under s. 25, Indian Evidence Act. A confession is not the less a confession because it is sought to be used against other persons. *Per totam Curiam.*—Under s. 162, Criminal Procedure Code, the written record of a statement made to a police officer in the course of an investigation cannot be used as evidence but the section does not exclude oral evidence of the statement whether the statement has been taken down in writing or not. KING-EMPEROR *v* NILAKANTA (1912) . . . I. L. R. 35 Mad. 247

——— s. 30—*Co-accused—Plea of guilty—Removal of co-accused from dock—Co-accused's confession—Admissibility as against the other prisoner.*

EVIDENCE ACT (I OF 1872)—*contd.*

——— s. 30—*concld.*

Where one co-accused pleads guilty and is removed from the dock and the other accused alone is tried: *Held*, that the confession of the former cannot be taken into consideration as against the latter under s. 30 of the Indian Evidence Act, for there has been no joint trial *Queen-Empress* v. *Pahuji*, *I. L. R 19 Bom 195*, followed. EMPEROR *v.* KERAMUT SIRDAR (1911)

16 C. W. N. 49

——— s. 35—*Admissibility of report by Tahsildar to Collector* A Tahsildar, in response to the requisition of the Collector, sent the following report:—"I beg to state that the village Munsif of Inavaram reports that the charities referred to have not yet been commenced." *Held*, that the report was not admissible under the first part of s. 35 of the Evidence Act to prove that the charities referred to were not performed on the date of the report. Although in certain cases an isolated document may be considered a book or register within the meaning of the first part of s. 35, it does not follow that every report regarding a fact from a public servant to his official superior in pursuance of directions from the latter, is admissible evidence to prove such fact. MALLIKARJUNA DUGGET *v.* THE SECRETARY OF STATE (1911)

I. L. R. 35 Mad. 21

——— s. 44—*Compromise decree—Suit to set aside decree on the ground that the agreement was caused by undue influence—Jurisdiction* A decree obtained by consent or on a compromise can be attacked in a separate suit, not only upon the ground of fraud but upon any ground which would be a sufficient reason for invalidating the agreement upon which the decree was based. *The Huddersfield Banking Company, Limited* v. *Henry Lister and Son, Limited, L. R. 2 Ch. 273*, followed. *Musammat Gulab Kuar* v. *Badshah Bahadur, 13 C. W. N. 1197*, and *Sarbesh Chandra Basu* v. *Hari Dayal Singh, 14 C. W. N. 451*, referred to. SHAMI NATH CHAUDHRI *v.* RAMJAS (1911)

I. L. R. 34 All. 143

——— s. 45—

See SEDITION **I. L. R. 39 Calc. 606**

——— s. 69—*Proof of document—Document required by law to be attested—Death of attesting witness—Hindu law—Joint Hindu family—Parties.* On execution of a deed of mortgage the names of two out of the four attesting witnesses were written by the scribe who also signed the document himself. *Held*, that it being necessary to prove the deed of mortgage after the death of all the attesting witnesses and the scribe, it was sufficient to prove the handwriting of the scribe. *Radha Kishen* v *Fateh Ali Ram, I. L. R. 20 All. 532*, referred to. Where all the adult members of a joint Hindu Family appear on the record as plaintiffs or defendants it is a legitimate presumption that they are acting as managers on behalf of themselves and of the minor members of the family who do not join in the suit. *Hori Lal* v. *Munman Kunwar, I. L. R. 34 All. 549*, and *Nathu Lal* v. *Lala, I. L. R. 34 All. 572*, referred to. KRISHNA JIVA TEWARI *v.* BISHNATH KALWAR (1912)

I. L. R. 34 All. 615

EVIDENCE ACT (I OF 1872)—*contd.*

——— s. 69—*concld.*

——— s. 73—*Handwriting, proof of—Document when admissible against accused.* A document to be admissible against an accused person should be proved (i) to be either a document in the handwriting of an accused person by comparison with an admitted or proved specimen of his handwriting, in the light of the testimony of expert witnesses, or (ii) to be in the possession of an accused person, or (iii) to be admissible as falling within the scope of s. 10, Evidence Act *Barindra Kumar Ghose* v. *Emperor, 14 C. W N. 1114 I. L. R 37 Calc 467*, followed. PULIN BEHARI DAS *v.* KING-EMPEROR (1911)

16 C. W. N. 1105

——— s. 83—*Evidence Act (I of 1872), ss. 13, 83—Map of khas mehal land prepared under direction of Government—Admissibility in boundary disputes—Witness, non-attendance of—Process to compel attendance refused without good ground—Second appeal.* In a dispute relating to the boundary of a holding between the plaintiff and the Municipal Corporation of Calcutta: *Held*, that a map prepared in 1872 under the direction of the Government acting not in its sovereign capacity but as the landlord of this and neighbouring holdings, was admissible in evidence, if not under s. 83, under s. 13 of the Evidence Act UPENDRA NATH GHOSH *v.* THE CHAIRMAN OF THE CALCUTTA CORPORATION (1911)

1 C. W. N. 116

——— s. 91—

See TRANSFER OF PROPERTY ACT, S. 107

I. L. R. 36 Bom. 500

———*Suit on promissory note—Note inadmissible in evidence—Plaintiff entitled to fall back on original cause of action.* If a creditor has a cause of action for the recovery of money, for which his debtor has executed a promissory note, separate from and independent of the note, he can recover upon such cause, in case the note for any reason cannot be put in evidence. Nor is the creditor necessarily debarred from suing on the original cause of action by the fact that it arose out of the same transaction in the course of which the promissory note was executed. *Pursotam Narain* v. *Taley Singh, I. L. R. 26 All 178*, overruled. *Sheikh Akbar* v. *Sheikh Khan, I. L. R. 8 Calc 256*, *Krishnaji* v. *Raymal, I. L. R 24 Bom. 360*, *Virbhadrapa* v. *Bhimaji, I. L. R. 28 Bom. 432*, *Banarsi Prasad* v. *Fazal Ahmad, I L. R 28 All 298*, and *Sri Nath Das* v. *Angad Singh, 7 All. L. J. 459*, referred to. RAM SARUP *v.* JASODHA KUNWAR (1911)

I. L. R. 34 All. 158

——— s. 108—*Evidence—Presumption of death—Burden of proof. Held*, that the presumption which it is permissible to make under s. 108 of

EVIDENCE ACT (I OF 1872)—*contd.*

——— **s. 108**—*concld.*

the Indian Evidence Act, 1872, does not go further than the mere fact of death. If the period which has elapsed since the time that the person whose death is in question was last heard of is more than seven years, there is no presumption that such person died during the first period of seven years and not at any subsequent period. *Dharup Nath* v. *Gobind Saran, I. L. R. 8 All 614,* discussed. *In re Phene's Trusts, L. R. 5 Ch. A. 139, Narayan Bhagvant* v. *Shriniwas, 8 Bom. L. R. 226, Fani Bhushan Banerji* v. *Surjya Kanta Ray Chowdhry, I. L. R. 35 Calc. 25,* and *Srinath* v. *Probodh Chunder Das, 11 C. L. J., 580,* referred to. MUHAMMAD SHARIF *v.* BANDE ALI (1911)
I. L. R. 34 All. 36

——— **s. 114**—

See REGISTRATION ACT (III OF 1877) ss. 32, 60, 75 . **I. L. R 34 All. 253**

——— **s. 114**—*Burden of proof—Suit on mortgage bond—Production by plaintiff of copy of bond on the ground of loss of the original—Defendants' admission of execution and production of original with payment of debt endorsed by agent of mortgagee—Rebuttal of defendants' evidence by plaintiff with false story.* In a suit for money due on a mortgage bond, the plaintiff produced only a copy of the document alleging in his plaint that it had been lost. The defendant admitted its execution, but alleged that the debt had been discharged; and in support of his allegation he produced the original document containing the endorsement of the mortgagee through her agent of payment of the debt. The Subordinate Judge, relying on s. 114 of the Evidence Act, put the *onus* on the plaintiff, who to account for the possession of the bond by the defendant, set up a case supported by witnesses which both Courts below held to be false. The Subordinate Judge dismissed the suit. The Judges of the Judicial Commissioner's court disbelieved the evidence on both sides, set aside the presumption under s. 114 of the Evidence Act, and endeavoured to make out a case for the plaintiff based on a theory of their own. *Held,* (reversing that decision), that the first Court was right in holding that the production by the defendant of the bond with the endorsement of payment cast on the plaintiff the burden of proving that the debt was still outstanding; and that the Appellate Court should not have disregarded the presumption under s. 114 in favour of a "possibility" based on surmise. Suspicion, though a ground for scrutiny, could not be made the foundation of a decision. MUHAMMAD MEHDI HASAN KHAN *v.* MANDIR DAS (1912)
I. L. R. 34 All. 511

——— **s. 115**—

See ESTOPPEL **I. L. R. 39 Calc. 513**

——— **ss. 123, 124, 125**—*Privilege—Departmental enquiry into conduct of Police officers, statements made by witnesses at—Trial of Police Officers on charge of taking illegal gratification—Court's duty to send for the statements and allow accused to cross-examine thereon.* Statements made by witnesses

EVIDENCE ACT (I OF 1872)—*concld.*

——— **s. 123**—*concld.*

in the course of departmental enquiry into the conduct of Police Officer who were subsequently put upon their trial on charges of taking illegal gratification are not privileged under ss. 123, 124 or 125 of the Evidence Act, and the accused are entitled to cross-examine the witnesses under s 153 of the Evidence Act on the statements made by them at the departmental enquiry. *Empress* v. *Ramadhan Maharun, 2 Bom. L. R. 329.* HARBANS SAHAI *v* EMPEROR (1912) **16 C. W. N. 431**

——— **s. 126**—*Professional confidence, estatement made by client to pleader in—Disclosure without client consent—Impropriety—Inadmissibility in evidence* Plaintiff sought to prove that defendant who had recovered a decree for possession of property against certain third parties was plaintiff's *benamdar* and for that purpose examined defendant's pleader in that suit, who deposed that defendant had informed him that he was plaintiff's *benamdar Held,* that the statement of the pleader, having been made without his client's consent, was inadmissible in evidence under s. 126, Evidence Act. The pleader acted improperly in disclosing without his client's consent communications made to him in confidence as pleader. BAKAULLA MOLLAH *v.* DEBIRUDDI MOLLAH (1912) . . **16 C. W. N. 742**

——— **s. 132 and proviso**—

See THUMB-IMPRESSION.
I. L. R. 39 Calc. 348

——— **s. 135**—*Per Curiam*—While Counsel has discretion, the Court has also power under s. 135 of the Evidence Act to direct the order in which witnesses cited by a party shall be examined *In the goods of* GOPESSUR DUTT (1911)
16 C. W. N. 265

EVIDENCE OF REPUTATION.

See BURMESE LAW—MARRIAGE.
I. L. R. 39 Calc. 492

EXCISABLE ARTICLES.

——— "*Spirituous and fermented liquors*"—*Drugs containing spirituous liquor—Manufacture, sale or possession—Transport, import or export—Bengal Excise Act (V of 1909), ss. 46, 52, 55 and 57—Board Notifications—License—Misconduct of servant or agent.* The meaning of the Legislature in amending the Bengal Excise Act (VII of 1878) was to prevent chemists and vendors of drugs selling intoxicating liquors or otherwise dealing with them, and not to penalise the use of beneficent drugs. To be an excisable article, liquor must be intoxicating liquor. The term "spirituous liquor" is not intended to include a medicinal preparation merely because it is a liquid substance containing alcohol in its composition. S. 55 of the Bengal Excise Act (V of 1909) refers to manufacture, sale or possession of excisable articles. It does not apply to import, transport

EXCISABLE ARTICLES—*concld*

or export. S. 56 makes the holder of a license, permit, or pass liable for the misconduct of his servant or agent in matters of import, transport or export *Gonesh Chunder Sikdar* v. *Queen-Empress, I. L. R. 24 Calc. 157*, approved. MATI LAL CHANDRA *v.* EMPEROR (1912)
I. L. R. 39 Calc. 1053

EXCISE ACT (X OF 1871).

See ACT OF STATE
I. L. R. 39 Calc. 615

EXCISE ACT (BENG. V OF 1909).

——— s. 2 (14)—*Liquor, meaning of* Liquor as defined in s. 2 (*14*) of the Bengal Excise Act must be intoxicating liquor and the enumeration of all the liquids that follow does not make them liquor unless they are intoxicating. EMPEROR *v.* MOTI LAL CHANDER (1912)
16 C. W. N. 785

——— s 2 (20)—*Cocoanut, milk of, if exciseable.* The expression " juice drawn from any cocoanut " in s. 2 (*20*) of the Excise Act does not mean the milk of the cocoanut but the juice of the tree. EMPEROR *v.* MOTI LAL CHANDER (1912)
16 C. W. N. 785

——— ss. 46 (a), 56—

See MASTER AND SERVANT.
I. L. R. 39 Calc. 344

——— ss. 46, 52, 56, 57—*Illegal transport and possession of exciseable article—Taking orders to supply if abetment of transport.* Where medicinal drugs containing spirit which had been manufactured in Chandernagar within French territories were consigned from Chandernagore station by rail to Howrah and from there taken to a Calcutta shop in pursuance of orders given to the manufacturer by the manager of the Calcutta shop : *Held*, that assuming that the articles were exciseable, after they had passed undetected by the customs authorities, no charge could be framed at the instance of the Excise authorities against persons concerned in the transaction of importing exciseable articles, but the Excise authorities could proceed for illegal transport or export or possession of the articles imported. *Held*, on the evidence, that delivery of the articles to the Calcutta firm had taken place before the transport of the same commenced and the mere fact of the persons who despatched them from French territory having arranged that an agent of theirs should be present at the Calcutta shop to see that the goods were in order when opened did not prevent possession passing to the Calcutta firm and they were not liable to conviction for illegal transport or possession of exciseable articles. Taking an order for foreign goods which are exciseable may constitute abetment of their import but not of their transport. EMPEROR *v.* MOTI LAL CHANDER (1912)
16 C. W. N. 785

EXECUTION.

See CIVIL PROCEDURE CODE, 1882, ss. 287, 293 **I. L. R. 36 Bom. 329**

EXECUTION—*concld.*

See CIVIL PROCEDURE CODE, 1882, ss. 324A, 272, 285
I. L. R. 36 Bom 519

See CIVIL PROCEDURE CODE, 1882, s. 325A.
I. L. R. 36 Bom. 510

See CIVIL PROCEDURE CODE, 1908, s. 48
I. L. R. 36 Bom. 368

See DECREE . **I. L R. 36 Bom. 24**

See EXECUTION OF DECREE.

See EXECUTION OF DOCUMENT.

See IDOL **I. L. R. 36 Bom. 135**

EXECUTION OF DECREE.

See CIVIL PROCEDURE CODE, 1882, s. 230
I. L. R. 34 All. 397, 636

See CIVIL PROCEDURE CODE, 1882, ss. 278, 279, 280, 281.
I. L. R. 34 All. 365

See CIVIL PROCEDURE CODE, 1908, s. 47,
I. L. R. 34 All. 530

See CIVIL PROCEDURE CODE, 1908, ss. 47, 73, O. XXI, R. 55.
I. L. R. 36 Bom. 156

See CIVIL PROCEDURE CODE, 1908, s. 48
I L. R. 36 Bom. 498

See CIVIL PROCEDURE CODE, 1908, s. 48
I. L. R. 34 All. 20

See CIVIL PROCEDURE CODE, 1908, s. 60 (1) (*c*) **I. L. R. 34 All. 25**

See CIVIL PROCEDURE CODE, 1908, O. XXI, R. 16 **I. L. R. 36 Bom. 58**

See CIVIL PROCEDURE CODE, 1908, O. XXI, R. 57 . **I. L. R. 34 All. 490**

See CIVIL PROCEDURE CODE, 1908, O. XXI, R. 89 **I. L. R. 34 All. 186**

See GHATWALI TENURE
I. L. R. 39 Calc. 1010

See HINDU LAW—DEBT.
I. L. R. 39 Calc. 862

See LIMITATION ACT (XV OF 1877), SCH. II, ART. 178.
I. L. R. 34 All. 436

See LIMITATION ACT (IX OF 1908), SCH. I, ART. 179 . **I. L. R. 36 Bom. 638**

See MESNE PROFITS.
I. L. R. 39 Calc. 220

See PRE-EMPTION.
I. L. R. 34 All. 596

See PROHIBITORY ORDER.
I. L. R. 39 Calc. 104

See PROVINCIAL INSOLVENCY ACT (III OF 1907), SS. 16 AND 31.
I. L. R. 34 All. 106

See SALE.

1.——————*Assignment—Ex parte order passed subsequent to assignment—Power of*

EXECUTION OF DECREE—*concld.*

court on application of assignee to reconsider such order. Pending an application for execution of a decree the decree-holder sold the decree The purchaser applied for execution : but whilst his application was pending the former application of the original decree-holder came on for hearing, and it was decided, *ex parte*, that the decree was barred by limitation *Held*, that this decision was no bar to the consideration of the application for execution filed by the assignee of the decree nor was the Court hearing this application bound by the former *ex parte* finding BALMAKUND *v.* ASHFAQ HUSAIN (1912) . . . **I. L. R. 34 All. 518**

2. ——— *Decree for money against judgment-debtor personally—Judgment-debtor in possession as shebait—Civil Procedure Code (XIV of 1882), ss 244, 278* If *A*, in execution of a decree for money against *B* personally, attaches and proceeds to sell properties of which *B* alleges that he is in possession not in his own right, but as *shebait* of a deity to whom the properties have been dedicated, the question does not fall within the scope of s 244 of the Civil Procedure Code, but within the scope of s. 278 read with s. 280 of the Code *Kuriyali* v. *Mayan, I L. R. 7 Mad 255*, not followed. *Punchanun Bundopadhya* v. *Rabia Bibi, I. L. R. 17 Calc 711*, distinguished. KARTICK CHANDRA GHOSE *v* ASHUTOSH DHARA (1911) . **I. L. R 39 Calc. 298**

3. ——— *Decree passed in favour of several persons, one of whom was a minor and not properly represented Held* that the mere fact that at the time when the final decree in a suit was passed one of the decree-holders was a minor whose guardian *ad litem* had died and had not been replaced, was not sufficient to invalidate the decree. GOBARDHAN SAHAI *v.* MAHABIR SINGH (1912) . . . **I. L. R. 34 All. 321**

EXECUTION OF DOCUMENT.

evidence as to—

See PROBATE **I. L. R. 39 Calc. 245**

EXECUTION PROCEEDINGS.

See RES JUDICATA

I L. R. 39 Calc. 848

EXECUTION PURCHASER.

See PARTIES **I. L. R. 39 Calc. 881**

EXECUTION SALE.

See PARTIES **I. L. R. 39 Calc. 881**

EXECUTOR.

See CIVIL PROCEDURE CODE, 1908, O. XXXIII **I L. R. 36 Bom. 279**

See LIMITATION ACT, 1877, SCH. II, ART. 123 . . **I. L. R. 36 Bom. 111**

EX PARTE DECREE.

1. ——— A person who obtains an *ex parte* judgment is responsible for any slip in the order founded on the judgment CHAMPAT SINGH *v.* JANGU SINGH (1912) **16 C. W. N. 793**

2. ——— *Application for setting aside ex parte decree—Limitation—Limitation Act (XV of 1877), Sch II, Art. 164—Limitation Act (IX of 1908), Sch. I, Art 164—General Clauses Act (X of 1897), s 6* Where the right of the judgment debtor to make an application for setting aside an *ex parte* decree was lost under the provisions of Art 164, Sch II of the Limitation Act of 1877, long before Act IX of 1908 was passed, the provisions of the new Limitation Act of 1908 cannot revive the right to apply for setting aside the decree. NEPAL CHANDRA ROY CHOWDHURY *v.* NIRODA SUNDARI GHOSE (1912) **I. L. R. 39 Calc. 506**

EXPERT EVIDENCE.

See PROBATE **I. L. R. 39 Calc. 245**

——— The limits within which the opinion of experts is admissible considered and the difference between mere advice on evidence and opinion indicated by Woodroffe, *J. In the goods of* GOPESSUR DUTT *v.* SARAT KUMARI DASI (1911) . . . . **16 C. W. N. 265**

EXPERT OPINION.

See HANDWRITING, PROOF OF.

I. L. R. 39 Calc. 606

EXPLOSIVE SUBSTANCES ACT (VI OF 1908).

——— **ss. 4(b), 7—**

See MAGISTRATE **I. L. R. 39 Calc. 119**

——— **s. 5**—*Bomb found in joint family residence, who may be held responsible for—Possession, whose.* It is not the law that every person in a joint Hindu family should, merely, on the ground that a bomb is found in the joint family residence, be liable to be imprisoned and tried for an offence under the Explosive Substances Act (s. 5). If the article is found in a portion of the house of which one member of the family has the exclusive use, such member must *primâ facie* be held responsible for anything that is found there. But if the article is found in a portion of the house of which all the members of the family have use, then *primâ facie* the *karta* of the family is responsible. But in either case it is only a presumption which may be rebutted and if the Police act on the information, which they believe, showing that the article found in a house is in the exclusive possession of one member of the family and the article is found in a portion of the joint family residence of which all the members of the family have the use, then the head of the family is not liable to arrest merely on the ground that the article is found in a portion of the house to which all the family can resort *Queen-Empress* v. *Sangam Lal, I. L. R. 15 All.* 129, relied on. PEARY MOHAN DAS *v.* D WESTON (1911) **16 C. W. N. 145**

EXPORT.

See EXCISEABLE ARTICLES.
I. L. R 39 Calc. 1053

EXTRADITION.

——— *High Court, jurisdiction of—Extradition Proceedings, jurisdiction of High Court in—Code of Criminal Procedure (Act V of 1898), s. 491—Indian Extradition Act (XV of 1903), s. 3, sub-s. (3), (4), (6), (7) and (8) and s. 4, sub-s. (1)—Habeas Corpus.* If the provisions of the Legislature have not been carried out, the High Court can interfere, notwithstanding that the warrant has been given in extradition proceedings. *Rudolf Stallmann* v. *Emperor, I. L. R. 38 Calc. 547*, distinguished. S. 3, sub-s. (6) of the Indian Extradition Act, 1903, is not a substitute for, and does not interfere with, proceedings taken under s. 491 of the Code of Criminal Procedure, 1908, the provisions of which are as much binding as those of the Extradition Act. The Government of India may issue its order to *any* Magistrate, and such Magistrate may issue a warrant, provided he is one who has jurisdiction to enquire into the crime of the nature of that for which extradition is sought. Therefore, an enquiry into the case of a fugitive criminal under arrest in Calcutta can be made by the Magistrate of Alipore, if duly authorised. An order issued under s. 3, sub-s. (*1*) of the Indian Extradition Act, 1903, by the Government of *Bengal* upon a requisition made to the Government of *India* is invalid, and cannot be "ratified" by a subsequent order of the Government of *India*. Where, however, the latter order directs the Magistrate in pursuance of the former order "and of the statutory provisions in that behalf to enquire into the said case," the Government gives valid effect to its intention, and the Magistrate has jurisdiction to enquire. Under s. 528 of the Code of Criminal Procedure, 1898, the District Magistrate can transfer to his own file, from that of the Deputy Magistrate, an application by the fugitive criminal for return of his property. The Magistrate making the enquiry under s 3 of the Indian Extradition Act, 1903, can initiate fresh proceedings notwithstanding proceedings taken under a previous order. When the Magistrate sends up his report to the Government of India under s. 3, sub-s. (*b*) of the Indian Extradition Act, 1903, he becomes *functus officio*, and renders himself incapable, therefore, of recording evidence that may be subsequently produced. The Legislature intended that the fugitive criminal should be given an opportunity of defence. If such opportunity is not given, it goes to the jurisdiction of the Magistrate. The enquiry, therefore, is not according to law, and the issue of the warrant is itself invalid. *Per* MOOKERJEE, *J.*—The burden lies very heavily upon those who assert that a right of so much importance to the criminal as *habeas corpus*, given by the Common Law, has been taken away by implication. S. 491 of the Code of Criminal Procedure, 1898, is applicable to cases under the Indian Extradition Act. *Rudolf Stallmann* v. *Emperor, I. L. R. 38 Cal. 547*, distinguished. The jurisdiction of the High Court has not been taken away merely because the Government of India has already issued a warrant for surrender under s. 3, sub-s. (*8*) of the Indian Extradition Act, 1903. Depositions which have not been taken in the presence of the accused may be admitted by the Magistrate: *In re Counhaye, L. R. 8 Q. B. 410*. Where there is no evidence before the Magistrate, the Court will interfere. *R.* v. *Maurer, 10 Q. B. D. 513*, approved of. The Court will not consider questions regarding evidence, unless the objection is such that if effect were given to it, there would be no evidence left upon which the order for extradition could be supported. Under s. 4, sub-s. (*1*), the Magistrate may issue a warrant when the person to be arrested is within his jurisdiction. S. 4 merely provides a preliminary procedure. Under it an arrest may be effected before the receipt of the requisition mentioned in s. 3, otherwise the criminal might escape. The two sections do not overlap. Under s. 3, sub-s. (*1*) of the Indian Extradition Act, 1903, the only Government competent to issue the order for enquiry is the Government to whom the foreign state has made a requisition. This function must be performed strictly, and cannot be delegated. Where the provisions of the statute have not been followed, the report of the Magistrate cannot afford a foundation for the order of the Government of India under s. 3 of the Indian Extradition Act, 1903. *In the matter of* RUDOLF STALLMANN (1911) . . . I. L. R. 39 Calc. 164

EXTRADITION ACT (XV OF 1903).

——— s. 3, sub-ss. (3) to (8) and s. 4.—
See HABEAS CORPUS
I. L. R. 39 Calc. 164

EXTRADITION PROCEEDINGS.

See HABEAS CORPUS
I. L. R. 39 Calc. 164

See HIGH COURT, JURISDICTION OF.
I. L. R. 39 Calc. 164

F

FALSE EVIDENCE.

See THUMB-IMPRESSION.
I. L. R. 39 Calc. 348

FAMILY FIRM.

——— *Mortgage by manager—Suit upon the mortgage—Dismissal of the suit on the ground that the estate was not legally represented by the mortgagor on the date of mortgage—Reversal of the decree—Claim based upon a mortgage purporting to bind the partners in the firm and the mortgaged property* One Kavasji Mancherji had three sons, Ardeshir, Phirojsha and Eruchsha. They constituted a family firm known as Kavasji Mancherji and Sons. After the death of Kavasji, Ardeshir, in his capacity as the manager of the said firm, executed a *san* mortgage bond dated

FAMILY FIRM—*concld.*

the 17th April 1899 to the plaintiff and it was attested by Eruchsha as one of the attesting witnesses. The mortgage-debt was contracted for the purpose of paying off a judgment-creditor who had attached one of the family properties. The plaintiff having brought a suit for the recovery of the mortgage-debt, the first Court dismissed the suit on the ground that the estate of Kavasji was not legally represented by Ardeshir at the time of the mortgage. On appeal by the plaintiff: *Held*, reversing the decree, that the mortgage debt could not be a debt of Kavasji because it was incurred after his death, therefore, it would not give rise to any claim against the estate of Kavasji. The claim was based upon a mortgage which purported to bind the partners in the firm of Kavasji Mancherji and Sons and a certain property which was specified in the mortgage. The interest which was intended to be conveyed in the mortgaged property was the interest of Ardeshir, Phirojsha and Eruchsha. AHMEDABAD UNITED PRINTING AND GENERAL AGENCY COMPANY, LD. *v.* ARDESHIR KAVASJI (1912).

I. L. R. 36 Bom. 515

FATHER'S BROTHER'S SON.

See HINDU LAW—SUCCESSION.

I. L. R. 39 Calc. 319

FATHER'S DEBT.

See HINDU LAW—DEBT

I. L. R. 39 Calc. 862

FATHER'S LIABILITY.

See HINDU LAW—SURETY.

I. L R. 39 Calc. 843

FERRY.

See NORTHERN INDIA FERRIES ACT (XVII OF 1878), S 22

I. L. R. 34 All. 146

FIDUCIARY RELATIONSHIP.

See PURDANASHIN DONOR

I. L. R. 39 Calc. 933

FISHERY.

——— *Right to fishery in tidal and navigable river, how acquired—Limitation Act (XV of 1877), s. 26.* To establish an exclusive right of fishery in a tidal and navigable river, it is necessary to prove that the plaintiff's user was in assertion of a right other and higher than the general right of the public to fish. *Baban Mayacha* v. *Nagu Shravucha, I. L. R 2 Bom 19,* and *Narasayya* v. *Sami, I. L R. 12 Mad. 43,* relied on. *Quare* · Whether exclusive right of fishery in such a river can be acquired by proof of mere enjoyment in the manner provided in s. 26 of the Limitation Act of 1877, without a grant from the Crown. *Arzan* v. *Rakhal Chunder Roy Chowdhry, I L. R. 10 Calc. 214,* referred to. *Veresa* v. *Tatayya, I. L. R. 8 Mad. 467,* not followed. *Secretary of State for India* v. *Mathurabhai, I. L. R. 14 Bom. 213,* d *Nityahari Roy* v. *Dunne, I. L. R. 18*

FISHERY—*concld.*

Calc. 652, approved. ABHOY CHARAN JALIA *v.* DWARKA NATH MAHTO (1911)

I. L. R. 39 Calc. 53

FIXED-RATE HOLDING.

See ESTOPPEL. **I. L. R. 34 All. 538**

FIXED-RATE TENANCY.

See AGRA TENANCY ACT (II OF 1901), S. 9. . . **I. L. R. 34 All. 285**

See LANDLORD AND TENANT.

I. L. R. 34 All. 604

FIXTURE.

——— *Crop grown on another person's land, title if in owner of land—Suit by owner to recover value of crop cut and taken away—Fixtures, English law of if applies in this country* When after purchasing a holding at an execution sale and taking delivery of possession thereof through Court, the plaintiff suffered the tenant to grow crop on the land: *Held*, that the plaintiff could not sue for recovery of the value of the crop cut and taken by another. The crop did not become the plaintiff's as soon as it was grown merely because the plaintiff had acquired ownership of the land. *Mofiz Sheikh* v *Rasik Lal, I. L. R. 37 Calc. 815,* distinguished. *Lep Singh* v. *Nimar Khasia, I. L. R. 21 Calc 244,* referred to. PRIYA NATH PAL *v.* KAMINI DASI (1912)

16 C. W. N. 1101

FORECLOSURE.

See MORTGAGE—FORECLOSURE.

See MORTGAGE. **I. L. R. 39 Calc. 828**

——— suit for—

See CIVIL PROCEDURE CODE, 1908, S. 11

I. L. R. 36 Bom. 548

FOREIGN RECORDS.

See HEBEAS CORPUS.

I. L. R. 39 Calc. 164

FOREIGN TERRITORY.

See PENAL CODE, SS. 34, 109, 467.

I. L. R. 36 Bom. 524

FORFEITURE.

See LANDLORD AND TENANT.

I L. R. 39 Calc. 903

———of occupancy—

See LAND REVENUE CODE, BOMBAY, SS. 56, 214. **I. L. R. 36 Bom. 91**

1. ——— *Forfeiture by Government of Deshgat Inam lands—Effect of forfeiture on prior mortgage—Payment of assessment to Government by mortgagee in possession—Suit to redeem by mortgagor—Mortgagee connot deny mortgagor's title.* The plaintiff's ancestors mortgaged their Deshgat Inam lands to the defendant's ancestor with possession in 1855. The lands were

FORFEITURE—*concld.*

in 1856 forfeited by Government; but the mortgagee was continued in possession and paid assessment in respect of the lands to Government. In 1901, the plaintiffs sued to redeem the mortgage. The defendant contended that the order of forfeiture deprived the plaintiffs of all right to the lands and that the title thereafter became vested in the defendant. *Held*, that the order of forfeiture had merely the effect of converting the lands from a service tenure into lands liable to pay assessment to Government; and that it did not deprive the plaintiff of all right and title to the lands, and extinguish the relation of mortgagor and mortgagee which existed between the parties. *Vishnoo Trimbuck* v. *Tatia, 1 Bom H C. R. 22* and *Gangabai* v. *Kalapa Dari Mukiya (1885) 9 Bom. 419*, followed. *Held*, also, that the defendant who came into possession of the lands as mortgagee of the plaintiffs could not turn round after the order of forfeiture and take the benefit of it and challenge the validity of the mortgage in virtue of which his title to the land as mortgagee had begun. GURBASAPPA *v* RANGO VENKATESH (1912) . . **I. L. R. 36 Bom. 539**

2. ———— *Insolvency—Security for production of insolvent-debtor—Failure of insolvency application—Forfeiture of security money—Civil Proceduce Code (Act V of 1908), s. 145.* The decree-holder is entitled to the money that has been deposited by the surety as security for the benefit of the decree-holder, whose rights were interfered with, to enable the judgment-debtor to make an application in insolvency with a view to his protection from arrest, on the money being forfeited by the Court for failure to produce the debtor when required. The Court has no power to declare a forfeiture in favour of the Government. BASANTI LAL *v.* CHHEDO SINGH (1912). **I. L. R. 39 Calc. 1048**

FORGERY.

See CRIMINAL PROCEDURE CODE, S 195 (c) **I. L. R. 34 All. 654**

See PENAL CODE, SS. 34, 109, 467. **I. L. R. 36 Bom. 524**

See USING AS GENUINE A FORGED DOCUMENT. **I. L. R. 39 Calc. 463**

FORMÂ PAUPERIS, SUIT IN.

See PAUPER SUIT.

FRAUD

See COMPANY. **I. L. R. 36 Bom. 564**

———— *Fraudulent transfer of possession—Reversioner getting into possession from an alienee of the widow—Mortgage by alienee—Suit for foreclosure—Reversioner setting up the plea that widow's alienation beyond her life-time was void—Estoppel between mortgagor and mortgagee—Estoppel binds reversioner—Practice.* In 1878, *G's* widow, sold certain property, belonging

FRAUD—*concld.*

to *G*, to *G A*, who mortgaged it to *D* in 1892. The widow died in 1897. After *G A's* death in 1901, H (defendant No 3), who was a reversioner of G, slipped on it possession of the property by fraudulently inducing *G A's* sons (defendants Nos. 1 and 2) to favour his claim In 1908, the plaintiff who claimed through D, sued to recover his money by sale of the mortgaged property It was contended by H that it was not competent to *G's* widow to alienate the property beyond her life-time and that her alienation was not binding on him. *Held*, that *H* having obtained possession of the property by colluding with defendants Nos. 1 and 2, his fraud was sufficient in law to deprive him of the right to be heard in defence to the suit, that he was entitled to the property as reversionary heir of *G Held*, further, that defendants Nos 1 and 2 having been in possession of the property as mortgagors of the plaintiff were estopped from denying his right to foreclose the mortgage; and that that estoppel applied also to *H* who stepped into possession through a fraud common to *H* as well as defendants Nos 1 and 2 The true owner of property is entitled to retain possession even though he has obtained it from a trespasser by force or other unlawful means. This principle applies only when the true owner gets into possession without bringing himself within the law of estoppel. As between a mortgagor and his mortgagee neither can deny the title of the other for the purposes of the mortgage. A mortgagor cannot derogate from his grant so as to defeat his mortgagor's title, nor can the mortgagee deny the title of his mortgagor to mortgage the property. HILLAYA SUBBAYA *v.* NARAYANAPPA TIMMAYA (1911) . . . **I. L. R. 36 Bom. 185**

FRESH PROCEEDINGS.

See NOLLE PROSEQUI **16 C. W. N. 983**

FUGITIVE ACCUSED.

See HABEAS CORPUS. **I. L. R. 39 Calc. 164**

FURTHER INQUIRY.

———— *Power to direct further inquiry against a person not named in the complaint nor before the Court—Notice, necessity of—Criminal Procedure Code (Act V of 1898), s. 437.* The Court has no jurisdiction to direct a further inquiry, under s 437 of Criminal Procedure Code, in respect of a person who was not named in the complaint and against whom no other regular process has been issued. An order under section 437 of the Code made without previous notice to the accused is bad in law *Giridhari Marwari* v. *Emperor, 12 C. W. N 822*, followed. AMBAR ALI *v.* ANJAB ALI (1911) . . **I L. R. 39 Calc. 238.**

FUTURE WIFE.

———— **gift to—**

See HINDU LAW—WILL. **I. L. R. 39 Calc. 87.**

G

GAMBLING.

See PUBLIC GAMBLING ACT (III OF 1867) s. 12 . . I L R 34 All. 96

GANJA

——— illegal possession of—

See MASTER AND SERVANT I. L. R. 39 Calc. 344

GENERAL CLAUSES ACT (X OF 1897)

——— s 6 —

See EX PARTE DECREE. I. L. R. 39 Calc. 506

See TRANSFER OF PROPERTY ACT, SS. 88, 89 . . I. L. R. 34 All. 72

——— s. 10—

See LIMITATION ACT (IX OF 1908), s 31 I. L R. 34 All. 375

GENERAL CLAUSES ACT (I OF 1904).

——— s. 23—*Act (Local) No. I of 1900 (United Provinces Municipalities Act), s. 187—Municipality—Powers of Government to frame rules—Rules as to Municipal elections—"Previous Publication"—"Competent court"* Certain draft rules relating to municipal elections were published in the local Gazette. These draft rules were then considered by the Government in connection with such criticisms and objections as had been presented, and finally a set of rules was published in the Gazette as having been made under section 187 of the United Provinces Municipalities Act, 1900 *Held*, that such rules were none the less validly passed because in some details they differed from the draft rules previously published. The rules so made provided that a municipal election might be questioned by means of a petition presented to 'a competent Court' *Held*, that the expression 'competent Court' so used meant a Civil Court of competent jurisdiction with reference to the valuation given by the petitioner in his petition. GUR CHARAN DAS *v.* HAR SARUP (1912). . I. L. R. 34 All. 391

GHATWALI TENURE.

——— *Attachment—Receiver, appointment of —Execution of decree* On an application for execution of a decree, although an order directing attachment of a ghatwali estate may be erroneous, an order appointing a Receiver to receive the rents and profits of such estate is sanctioned by authority. *Udoy Kumari Ghatwalin* v. *Hari Ram Shaha, I. L. R. 28 Calc. 483*, referred to. KESOBATI *v.* MOHAN CHANDRA MANDAL (1912) . I. L. R. 39 Calc. 1010

GHEE.

See ADULTERATION I. L. R. 39 Calc. 682

GIFT.

See CONTRACT ACT, S. 19 I. L. R. 36 Bom. 37

See HINDU LAW.—GIFT

See MAHOMEDAN LAW—GIFT. I. L. R. 34 All. 465, 478

See TRUSTS ACT, S 5. I. L. R. 36 Bom. 396

——— to daughter—

See CUSTOM. I. L. R. 39 Calc. 418

——— to future wife—

See HINDU LAW—WILL. I. L. R. 39 Calc. 87

——— *Purdanashin donor—Fiduciary relationship—Cancellation—Independent and competent advice—Duty of solicitor—Power of revocation—Transfer of Property Act (IV of 1882), s. 126—Costs.* Where an old illiterate *purdanashin* woman executes an improvident deed of gift in favour of a person standing towards her in a fiduciary capacity, the *onus* lies on the donee to establish not only that the donor understood the transaction, but that she was in a position to exercise a free and unfettered judgment, that the intention to give was her own voluntary act, and that she had independent and competent advice. *Huguenin* v. *Baseley, 14 Ves. 273; Hall* v. *Hall, L. R. 8 Ch. App. 430*, followed. *Kanai Lall Jowhary* v. *Kamini Debi, 1 B. L. R. 31* (note); *Lyon* v. *Home, L R. 6 Eq. 655*, referred to. It is the duty of a solicitor who acts as the sole solicitor in such a transaction, to try and protect the lady against herself, and to make all proper enquiries. A solicitor does not discharge his duty by satisfying himself simply that the donor understands and wishes to carry out the particular transaction. He must also satisfy himself that the gift is one that it is right and proper for the donor to make under all the circumstances; and if he is not so satisfied it is his duty to advise his client not to go on with the transaction, and to refuse to act further if the client persists. *Powell* v. *Powell, [1900] 1 Ch 243, Wright* v. *Carter, [1903] 1 Ch. 27*, followed. *Coomber* v *Coomber, [1911] 1 Ch. 273*, distinguished. In considering the validity of a deed of gift, the absence of a power of revocation is of importance, though not sufficient by itself to show that the gift is invalid. *Hall* v. *Hall, L. R. 8 Ch. App 430*, referred to. KAMINI DASSEE *v.* KRISHNA CHANDRA MUKERJEE (1912). I. L. R. 39 Calc. 933

GOSAVIS

See DEKKHAN AGRICULTURISTS' RELIEF ACT, S. 2. I. L. R. 36 Bom. 543

GOVERNMENT

See CANTONMENT TENURE. I. L. R. 36 Bom. 1

See GRANT . I L. R 36 Bom. 438

See PARTIES . I. L. R. 39 Calc. 696

GOVERNMENT—*concld.*

——— acts of—

See ACT OF STATE.
I. L. R. 39 Calc. 615

——— forfeiture by—

See FORFEITURE.
I. L. R. 36 Bom 539

——— order of—

See HABEAS CORPUS.
I. L. R. 39 Calc. 164

GOVERNMENT NOTIFICATION.

See TRANSFER OF PROPERTY ACT (IV OF 1882), S 59. **I. L. R. 36 Bom. 617**

GOVERNMENT TENURES.

See SALE FOR ARREARS OF REVENUE.
I. L. R. 39 Calc. 981

GRANT.

See DEKKHAN AGRICULTURISTS' RELIEF ACT, S. 2, EXPL. (b).
I. L. R. 36 Bom. 151

See LAND REVENUE CODE, BOMBAY, SS. 56, 214. **I. L. R. 36 Bom. 91**

——— *Grant of occupancy by Government under a kabuliyat—Condition as to resumption for Government purposes, that is, for Railway and other purposes—Sale by Government—Construction of the condition—Government full proprietors.* Under a *kabuliyat* the occupancy of certain land had been granted to the plaintiff by the Collector subject only to the condition that it should be competent to Government to resume the land whenever it should be required by Government for Government purposes, that is, for Railway or other purposes. Afterwards the land was resumed and was sold to defendant 2 (from whose grandfather it was originally acquired for a Railway). The plaintiff, thereupon, brought the present suit against the Secretary of State for India in Council and defendant 2 for the recovery of the land on the ground that the sale to defendant 2 was not for Government purposes. *Held,* dismissing the suit, that Government were the proprietors of the land and as such they could resume it whenever they required it for their proprietary purposes. Government purposes must be construed as meaning that they were purposes of Government as the State proprietor, purposes which Government alone were entitled to prescribe in the exercise of their discretionary powers. SAPURLO SABSHETTI *v.* SECRETARY OF STATE FOR INDIA (1912) **I. L. R. 36 Bom. 438**

GUARANTEE.

——— *Contract, construction, of—Whether contingent or unconditional agreement—Inadmissibility of evidence of what took place after the execution of the contract on question of its construction—Contract Act (IX of 1872), ss. 32, 34, 56 and 65.* The question for determination in this appeal was the construction of the following letter dated 7th August, 1909, which was signed by the defendant, and given to the plaintiffs as security for the repayment of the loan of Rs. 1½ lakns mentioned therein. "In consideration of your having at my request acceded to the proposal of the Secretaries, Treasurers and Agents of the Tricumdas Mills Company, Limited, to advance to the Mills Rs. 1½ lakhs, I hereby bind myself to procure a loan within two weeks of Rs. 11 lakhs on the first mortgage of the Mills' block property, and to pay you thereout the said sum of Rs. 1½ lakhs agreed to be advanced by you to the Mills." In a suit for damages for breach of the contract contained in the letter, the Courts in India held in favour of the defendant that "all he had undertaken to do was to procure the lending of Rs. 11 lakhs if a first mortgage of the Mills was given and to pay thereout Rs. 1½ lakhs to the plaintiffs." *Held* (reversing that decision), that on its true construction the document amounted to a substantial undertaking by the defendant that a loan of Rs. 11 lakhs should be procured, and that out of that loan the sum of Rs. 1½ lakhs should be repaid to the plaintiffs. *Semble:* Evidence of what took place after the execution of the document was not admissible on the question of its construction. VISSANJI SONS & Co. *v.* SHAPURJI BURJORJI (1912).
I. L. R. 36 Bom. 387

GUARANTEE, LETTER OF.

See CONSTRUCTION OF DOCUMENT.
16 C. W. N. 769

GUARDIAN.

——— *Guardians and Wards Act, VIII of 1890, orders apparently under, made without jurisdiction—Proceedings not had bonâ fide orders in—Consent obtained by judicial pressure—Judge, no arbitrator.* One *D* died leaving a minor unmarried daughter by a predeceased wife and three widows. One *R* with a view to secure the marriage of his son with the girl (so that ultimately the property left by *D* might pass into the hands of the representatives of his own family) got the maternal grandfather of the girl, who was his servant, to apply for the appointment of himself as the guardian of the property and person of the minor, but no part of *D's* property had yet vested in her, the widows being according to Hindu law *D's* heirs. The widows objected to the application, but the District Judge having, owing to a misconception, passed orders directing that unless the widows placed their properties in charge of *R* he would remove the girl, whom they dearly loved, from their custody to that of the maternal grandfather, they were induced to grant a lease of the properties to *R*, after which they were made to present an application for the appointment of themselves as guardians of the person of the girl and they were formally appointed as guardians. *Held,* that no guardian was needed for the protection of the person of the girl and she had no property of which a possible guardian

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could take charge. The application of the widows for appointment as guardians of her person was not voluntary, and the application of the maternal grandfather was not made *bonâ fide*, and the orders passed by the Judge were without jurisdiction. "Orders passed in proceedings so instituted and conducted, even if they were nominally in conformity with statutory provisions could hardly be regarded as invested with the efficacy of legal orders made in *bonâ fide* judicial proceedings." That the Judge could not be deemed in this case to have acted as an arbitrator chosen by the parties voluntarily, the ladies having in fact acted under judicial pressure of the highest degree to which they were not in a position to offer effectual and successful resistance, and, consequently, *Ledgard* v. *Bull, I. L. R. 9 All 191, L. R. 13 I. A. 134*, did not apply. SAHADRA KOER *v* RAMADIN CHOWDRY (1911) . . **16 C. W. N. 444**

GUARDIAN AND MANAGER.

——— power of—

See SPECIFIC PERFORMANCE.
I. L. R. 39 Calc 232

GUARDIAN AND MINOR.

See MAHOMEDAN LAW—ALIENATION.
I. L. R. 34 All. 213

GUARDIANS AND WARDS ACT (VIII OF 1890).

——— s. 12 cl. 3 (*b*)—*Power to order money to be paid into Court—Civil Procedure Code (Act V of 1908), s. 141, Order XXXIX, rule 10. Order XL, rule 1.* H petitioned the Court under the Guardians and Wards Act, 1890, to be appointed guardian of the property of J a minor; he also applied to the Court in the following terms:—"In the meanwhile and pending these proceedings a receiver may be appointed to take charge of the amount of Rs. 4,141-9-1 due and payable to this minor by G or such other order may be passed to protect the property of the said minor as to this Honourable Court may seem meet." *Held*, that it was open to the Court to pass an order directing G to forthwith deposit in Court the sum of Rs. 4,141-9-1 to abide by the further order of the Court. *In re* BAI JAMNABAI (1911)
I. L. R. 36 Bom. 20

——— ss. 29, 30—

See MORTGAGE . **16 C. W. N. 715**

——— s. 31, sub. s. (*4*)—*Construction of words "any person."* The words "any person" in the last part of sub-section (*4*) Guardians and Wards Act (VIII of 1890), are not limited by the words "relative or friend" in the previous part of the section. The Court is competent to hear a person who is not a relative or friend. VENU GOPAL BAHADUR *v.* KADIRVELUSWAMI NAICKER (1912) . . . **I. L. R. 35 Mad. 743**

GUARDIANS AND WARDS ACT (VIII OF 1890)—*concld.*

——— ss. 43, 45—*Order upon guardian not to marry ward without Court's leave, disobedience of, if punishable, when order without jurisdiction—Order if may be passed when minor a Hindu—Guardian's failure to produce ward in Court—Guardian if may be fined—"Enforcement," of order meaning of—Civil Procedure Code (Act V of 1908), O. XXXIX, rr. 1 and 2.* Before proceedings can be taken on account of disobedience of an injunction issued by a Court, it must be ascertained that the Court had jurisdiction over the subject-matter in controversy. If the Court had no jurisdiction over or had exceeded its powers in granting an injunction in matters beyond its jurisdiction, the injunction must be treated as absolutely void and the person who has disobeyed it cannot be punished for the alleged offence. There is in this respect a clear distinction between an order erroneously made with jurisdiction and an order made absolutely without jurisdiction. Sub-s. (*4*) of s. 43 of the Guardians and Wards Act applies to all cases of disobedience of an order passed under sub-s. (*1*) or sub-s. (*2*) of that section, whether or not the effect of the disobedience is capable of removal or reparation. *Quare:* Whether there is any bar to a District Judge giving directions in an order appointing a guardian of the person of a minor Hindu that the minor should not be married by the guardian without the consent of another relation and without the Court's leave, where the guardian appointed is also the guardian for marriage, according to Hindu law. *Bai Diwali* v. *Moti Karson, I. L. R. 22 Bom. 504*, referred to. Where it was found that the application upon which the order for appointment of a guardian was made was not made voluntarily: *Held*, that the order was without jurisdiction and disobedience on the part of the guardian of the directions relating to the marriage of the minor could not be punished under s. 43, cl. (*4*) of the Guardians and Wards Act like disobedience of an injunction. Cl. (*a*) of sub-s. (*1*) of s. 45 of the Guardians and Wards Act does not contemplate orders on the guardian appointed under the Act for the production of the ward, and such a guardian cannot be fined under the section for failing to produce the ward before the Judge when required. SAHODRA KOER *v* DHAJADHARI GOSAIN (1911) . **16 C. W. N. 447**

H

HABEAS CORPUS.

——— *High Court, jurisdiction of—Extradition proceedings, jurisdiction of High Court in—Code of Criminal Procedure (Act V of 1898), s. 491—Indian Extradition Act (XV of 1903), s. 3, sub-ss. (3), (4), (6), (7) and (8) and s. 4, sub-s. (1)—Evidence Act (I of 1872), if exhaustive—English Extradition Act (33 and 34 Vict c. 52) part of the lex fori—Foreign Records, authentication and admissibility of—Copy of document proved in Foreign Court, if admissible—Deposition taken in*

HABEAS CORPUS—*contd.*

absence of accused—Evidence of offence on which Magistrate may act—Arrest, irregularity of, if vitiates proceedings otherwise regular—Magistrate who may be chosen by Government—Government of Bengal, if can issue order on requisition made to Government of India—If such order can be ratified by Government of India—Fresh proceedings, legality of, whilst previous ones pending—Magistrate, if can record evidence after sending report to Government—Refusal of reasonable opportunity to fugitive to produce evidence, whether affects jurisdiction of Magistrate It must be shown clearly that a supreme right such as that to *habeas corpus*, or to directions in the nature of that writ, has been expressly (if that be possible to the Legislature) taken away. There is no such express provision in the Indian Extradition Act. The English Extradition Act did not give the right to *habeas corpus*. It merely declared a right which existed independently of that the statute. *In re Siletti 87 L. T. 332, 71 L. J. K. B. 935;* and *Ex parte Besset 6 Q B. 481*, followed. When a person appears before the High Court and says that he is illegally detained, the High Court can enquire whether the warrant for his custody was validly issued in extradition proceedings. If the provisions of the Legislature have not been carried out, the High Court can interfere, notwithstanding that the warrant has been given in extradition proceedings. *Rudolf Stallmann* v. *Emperor, I. L. R. 38 Calc., 547*, distinguished. Section 3, sub-s. (*6*) of the Indian Extradition Act, 1903, is not a substitute for, and does not interfere with, proceedings taken under s. 491 of the Code of Criminal Procedure, 1898, the provisions of which are as much binding as those of the Extradition Act. The Indian Evidence Act (I of 1872) does not contain the whole law of evidence governing this country. Under s. 2, which saves certain rules of evidence, the English Extradition Act, which is applicable to this country, is part of the *lex fori*. Records, therefore, of the Berlin Court, which are authenticated in the manner prescribed by sections 14 and 15 of the English Extradition Act, can be properly admitted in evidence. A *copy* of a document (*Bill*) the *original* of which was proved in the German Court, is admissible as part of the records of the German Court. There may, however, be cases in which the production of the original document may be necessary for the enquiry in this country. If there is evidence before the Magistrate, the fugitive criminal cannot ask the Court to determine whether a *primâ facie* case has been properly found on such evidence. *In re Siletti 87 L. T. 332; 71 L. J. K. B. 935*, followed. The High Court will not sit in appeal to review and weigh the evidence. It is sufficient that there should be some evidence of the offence upon which the Magistrate may reasonably act. Any irregularity in the original arrest of the accused is immaterial, provided that the subsequent proceedings have been right. *R.* v. *Weil, 9 Q. B. D. 701; 15 Cox C. C. 189*, followed. The substantial question is not how the accused is brought into Court, but whether the Court which enquired into his case had jurisdiction to do so. The Government of India may issue its order to *any* Magistrate and such Magistrate may issue a warrant, provided he is one who has jurisdiction to enquire into the crime of the nature of that for which extradition is sought. Therefore, an enquiry into the case of a fugitive criminal under arrest in Calcutta can be made by the Magistrate of Alipore, if duly authorised An order issued under s. 3, sub-s. (*1*) of the Indian Extradition Act, 1903, by the Government of *Bengal* upon a requisition made to the Government of *India* is invalid, and cannot be "ratified" by a subsequent order of the Government of *India*. Where, however, the latter order directs the Magistrate in pursuance of the former order "and of the statutory provisions in that behalf to enquire into the said case," the Government gives valid effect to its intention, and the Magistrate has jurisdiction to enquire. Under s. 528 of the Code of Criminal Procedure, 1898, the District Magistrate can transfer to his own file, from that of the Deputy Magistrate, an application by the fugitive criminal for return of his property. The Magistrate making the enquiry under s 3 of the Indian Extradition Act, 1903, can initiate fresh proceedings notwithstanding proceedings taken under a previous order. When the Magistrate sends up his report to the Government of India under s 3, sub-s. (*b*) of the Indian Extradition Act, 1903, he becomes *functus officio*, and renders himself incapable, therefore, of recording evidence that may be subsequently produced. The Legislature intended that the fugitive criminal should be given an opportunity of defence. If such opportunity is not given, it goes to the jurisdiction of the Magistrate. The enquiry, therefore, is not according to law, and the issue of the warrant is itself invalid. If the Magistrate suspected that the accused had no evidence, it is open to him to question the accused. If the latter stood on his right not to answer, the Court might draw such inference as the refusal to reply and the circumstances of the case suggested. *Per* MOOKERJEE, *J.*—The burden lies very heavily upon those who assert that a right of so much importance to the criminal as *habeas corpus*, given by the Common Law, has been taken away by implication. Section 491 of the Code of Criminal Procedure, 1898, is applicable to cases under the Indian Extradition Act *Rudolf Stallman* v. *Emperor, I. L. R. 38 Calc. 547*, distinguished. The jurisdiction of the High Court has not been taken away merely because the Government of India has already issued a warrant for surrender under s. 3, sub-s. (*8*) of the Indian Extradition Act, 1903. Depositions which have not been taken in the presence of the accused may be admitted by the Magistrate: *In re Counhaye, L. R. 8 Q. B. 410*. Where there is no evidence before the Magistrate, the Court will interfere. *R.* v. *Maurer, 10 Q. B. D. 513*, approved of. The Court will not consider questions regarding evidence, unless the objection is such that if effect were given to it, there would be no evidence left upon which the order for extradition could be supported. Under s. 4, sub-s. (*1*), the

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Magistrate may issue a warrant when the person to be arrested is within his jurisdiction. Section 4 merely provides a preliminary procedure Under it an arrest may be effected before the receipt of the requisition mentioned in s 3, otherwise the criminal might escape The two sections do not overlap Under s 3, sub-s (*1*) of the Indian Extradition Act, 1903, the only Government competent to issue the order for enquiry is the Government to whom the foreign state has made a requisition. This function must be performed strictly, and cannot be delegated. Where the provisions of the statute have not been followed, the report of the Magistrate cannot afford a foundation for the order of the Government of India under s 3 of the Indian Extradition Act, 1903. *In the matter of* RUDOLF STALLMANN (1911).

I. L. R. 39 Calc. 164

HAKKS.

See SANAD, CONSTRUCTION OF.

I. L. R. 26 Bom. 639

HANDWRITING

——— proof of—

See SEDITION.

I. L. R. 39 Calc. 606

HEADINGS OF CLAUSES.

See BOMBAY MUNICIPAL ACT, s 297.

I. L. R. 36 Bom. 405

HEREDITARY OFFICE.

See SHEBAIT.

I. L. R. 39 Calc. 887

HEREDITARY OFFICES ACT, BOMBAY (Bom. III OF 1874).

——— s. 67——*Collector—Vatandars—Service Register—Suit for declaration as head of family—Civil Court—Jurisdiction.* The plaintiffs brought a suit to have it declared that they were entitled to a share of the vatan and to have their names recorded as such in the Service Register kept by the Collector. *Held,* that the suit fell under the ban of clause (*d*) of s. 67 of the Hereditary Offices Act (Bombay Act III of 1874) and was not cognizable by the Civil Court. *Govind Sitaram* v. *Bapuji Mahadeo, I. L. R. 18 Bom 516,* and *Balkrishna Chimnaji* v *Balaji Ramchandra, I. L. R 9 Bom. 25,* explained JIVAJI SAMBHAJI *v.* FAKIR SABAJI (1912). **I. I. R. 36 Bom. 420**

HEREDITARY PRIEST.

——— office of—

See HINDU LAW—CASTE QUESTION.

I. L. R. 36 Bom. 94

HIGH COURT.

See DISTRICT MUNICIPAL ACT (BOMBAY), s. 160.

I. L. R 36 Bom. 47

HIGH COURT, JURISDICTION OF.

See EXTRADITION.

I. L. R. 39 Calc. 164

See HABEAS CORPUS

I. L. R. 39 Calc. 164

1. ——— *Revisional Jurisdiction—Error by Small Cause Court on a question of limitation—Civil Procedure Code (Act V of 1908), s 115—Limitation.* An error by the Small Cause Court on a question of limitation, does not justify the interference of the High Court under s. 115 of the Civil Procedure Code. *Amritrav Krishna Deshpande* v. *Balkrishna Ganesh Amrapurkar, I. L. R 11 Bom. 488, Sundar Singh* v. *Daru Shankar, I. L R. 20 All 78,* and *Amir Hassan Khan* v *Sheo Baksh Singh, I L. R. 11 Calc. 6,* referred to. RAMGOPAL JHOONJHOONWALLA *v.* JOHRMALL KHEMKA (1912)

I. L. R. 39 Calc. 473

2. ——— *Jurisdiction of the High Court to try a Native Indian Seaman for an offence committed on board a British vessel on the high seas—Stoppage of the vessel thereafter at intermediate ports—Accused brought to Calcutta in custody—Applicability of English law to the offence and the charge, and of Indian law to the procedure and sentence—Courts (Colonial) Jurisdiction Act (37 and 38 Vict. c. 27), s. 3—Merchant Shipping Act (57 & 58 Vict c 60), ss. 684, 686.* The High Court of Calcutta has jurisdiction in its Original Criminal Side, under ss. 684 and 686 of the Merchant Shipping Act (57 & 58 Vict c 60), to try a Native Indian seaman for murder or manslaughter committed on board a British vessel on the high seas, who is brought to Calcutta under custody, notwithstanding that the vessel touched, after the commission of the offence, at intermediate ports in the course of the voyage The offence should be tried and the charge framed, under the English law, but the procedure at the trial and the sentence must be regulated by the law of India. Section 3 of 37 & 38 Vict c 27, does not deal with the trial of the case, but with the sentence after conviction. *Queen-Empress* v. *Sheikh Abdool Rahiman, I. L. R. 14 Bom. 227,* and *King-Emperor* v. *Chief Officer of the "Mushtari," I L. R. 25 Bom. 636,* dissented from EMPEROR *v* SALIMULLAH (1912) . **I. L. R. 39 Calc. 487**

3. ——— *Jurisdiction of the High Court—Restraint of suit outside the jurisdiction—Persons not residing within jurisdiction—Injunction.* The High Court has power only to restrain a person who happens to be within its jurisdiction from prosecuting a suit without its jurisdiction. On the principle of "equity acting *in personam*" the mere fact that he possesses property, moveable or immoveable, within the jurisdiction but does not reside within it, does not give the High Court jurisdiction over him, since in the event of an injunction being granted against him and that being disobeyed he could not be subjected to the process of contempt. *Vulcan Iron Works v. Bisshumbhur Persad, I. L. R. Calc.*

HIGH COURT, JURISDICTION OF— *contd.*

233 ; 13 C W N. 346 ; *1 Ind Cas. 927*, followed. *The Carron Iron Co.* v. *Maclaren, 5 H L C. 416; s. c. 24 L J Ch 620, Maugle Chand* v *Gopal Ram, I. L. R. 34 Calc. 101*, relied on. JUMNA DAS *v.* HARCHARAN DASS (1911). . **16 C. W. N 4**

4. ——— *Jurisdiction—Letters Patent, High Court, 1865, cl. 12—Wrongful cutting and removal of coal—Trespass—Disputed boundary —Suit for land—Agreement between predecessors-in-title of parties—Privity of contract and estate.* The plaintiff company's predecessors-in-title who held certain coal lands known as Mouza Lodna in Manbhum, under a permanent lease, granted ar underlease of a share thereof to *S*, and it was agreed that the boundary should be demarcated between the portion underleased and the portion retained by the grantors, and that a barrier of 30 feet of coal should be maintained between the two portions of the mouza, and that if either party encroached within 15 feet of the boundary line, he should make good any loss sustained by the other party. No boundary was demarcated at the time. The permanent lease of the said mouza was, subject to the said underlease to *S*, subsequently assigned to *T* and others, and thereafter the boundary was laid down and marked by the respective agents of *T* and others, and of *S*, and a plan showing the boundary was signed by both parties. Subsequent thereto *T* and others assigned their permanent lease of the mouza to the plaintiff company, and *S* granted an underlease of his share in the mouza to *R L S*, who granted an underlease of the same to the defendant who there carried on a colliery. The plaint alleged that the defendant had wrongfully cut into and removed portions of coal from the 30 feet of barrier and beyond it, that the trespass and conversion had taken place within two years; and that the coal so removed had been sold and delivered to the plaintiff company under an agreement to purchase the output of the defendant's colliery, and claimed damages for the value of the coal so removed and damages caused by the breach of contract in cutting through the barrier The defendant denied that he had carried away any coal from the 30 feet barrier and stated that he had confined his operations well within the area underleased to him, and that the plaintiff company had never been in possession of the area from which he had carried away coal *Held*, that the suit, so far as it sought to recover damages for carrying away the plaintiff company's coal, was founded on a case of tresspass *quare clausum fregit* which necessitated the title in respect of that coal being gone into, and was therefore a suit for land within the meaning of cl 12 of the Charter. *Rajmohun Bose* v. *East Indian Railway Co, 10 B. L R 241*, distinguished That so far as the agreement not to cut into the 30 feet of barrier was concerned, there was no privity of contract or estate between the defendant and the plaintiff company, and the defendant was not personally liable on any of the covenants in the underlease granted to *S*, and that the plaint did not disclose any cause of action against the defendant based on the agreement. LODNA COLLIERY CO., LD. *v.* BIPIN BIHARI BOSE (1912).
I. L. R. 39 Calc. 739

HIGH COURT, JURISDICTION OF— *concld.*

HIGH COURT RULES, BOMBAY.

——— **Rules 81, 321 and 323.—**

——— *Delegation of powers under rules 321 and 323 to the Prothonotary—Power of the Prothonotary to deal with applications to give short service of notice of motion.* The plaintiff filed a suit against the defendants claiming, *inter alia*, the appointment of an *interim* receiver and an *interim* injunction The plaintiff obtained from the Prothonotary leave to give the defendants short notice of a motion in the said suit under rules 321 and 323 of the Bombay High Court Rules. The defendants objected that the Prothonotary had no power to shorten the time for notice. *Held*, that the Prothonotary had such power. MOORJI MANECK *v.* PASSU PARBHAT (1911).
I. L. R. 36 Bom. 418

HIGH SEAS.

——— **offence committed on—**

See HIGH COURT, JURISDICTION OF.
I. L. R. 39 Calc. 487

HIGHWAY.

——— *Right to carry procession in—Where user of highway proved, presumption will be that the right is unrestricted—Trustees, dedication by.* Where user as a highway, sufficient to raise a presumption of dedication has been proved, the dedication will, in the absence of evidence to the contrary, be presumed, if possible, to be unrestricted. Marching in procession on a highway is not an excessive user of the highway; and a right of unrestricted user will include the right of marching in procession on the highway. *Shadagopacharlar* v. *Krishnamurthy Rao, I. L. R. 30 Mad 185*, referred to A presumption of dedication by trustees will not be made when such dedication will contravene the purpose of the trust. The illegality of such a dedication by the trustees must be clearly proved VIBUDAPRIYA THIRTHASWAMY *v* ESOOF SAHIB (1910).
I. L. R. 35 Mad. 28

HINDU COMMON LAW.

See HINDU LAW—WIDOW.
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HINDU LAW. COL.

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HINDU LAW—ADOPTION.

See Estoppel **I. L. R. 34 All. 398**

1. ——— Anumatipatra, construction of—*Adoption—Simultaneous or successive adoption—Preferential right of adoption of senior widow.* Where a Hindu, governed by the Bengal school of Hindu law, had previous to his death executed an *anumatipatra* in these terms: "This *anumatipatra* for taking adopted son is executed to the following effect . . . . . in favour of first wife *B S* and second wife *S B*. . . I am giving permission in writing that when I shall be no more, each of my two wives shall be at liberty to adopt three sons successively, that is, one after another, and shall lead a moral life. It is also permitted that each of my wives shall live in my ancestral dwelling house with her adopted son . . . ". *Held*, that applying the canon of construction laid down in *Abhoy Chunder Bagchi* v. *Kalapahar Hajri*, *I. L. R. 12 Calc. 406*; *L. R., 12 I. A. 198*, the document did not contemplate simultaneous adoption by the widows, but successive adoption in accordance with the rule of law As between co-widows, the senior, that is to say, she, whose marriage was earlier, has in general a preferential right of adoption. Ranjit Lal Karmakar *v* Bijoy Krishna Karmakar (1912) . **I. L. R 39 Calc. 582**

2. ——— Rule that the adopted boy should be such that his mother could be legally married by the adopting father—*Limits of the rule.* Under Hindu Law, the rule that no one can be adopted whose mother the adopter could not have legally married, is confined to the three cases of a daughter's son, a sister's son and a mother's sister's son *Ramchandra* v *Gopal*, *I. L. R 32 Bom. 619*, followed A person can vividly adopt the son of his mother's brother Yamnava *v* Laxman Bhimrao (1912) . **I. L. R. 36 Bom. 533**

HINDU LAW—ALIENATION.

1. ——— Suit by alienee of a co-parcener in family property—*Time when the share is ascertained.* In Hindu Law the alienee of the interest of a co-parcener is entitled to enforce his claim against the share to which the vendor was entitled to at the time of the alienation. The mortgagee of a Hindu father is therefore entitled to proceed against the share of a son subsequently born in family property mortgaged by the father. *Rangasami* v. *Krishnayyan*, *I. L. R. 14 Mad. 408*, dissented from *Ayyagari Vekataramayya* v. *Ayyagari Ramayya I. L. R. 25 Mad. 690*, followed. *Hardi Narayan Sahu* v. *Ruder Perkash Misser*, *I. L. R. 10 Calc. 626*, followed. Chinnu Pillai *v* Kalimuthu Chetty (1911).
I. L. R. 35 Mad. 47

HINDU LAW—ALIENATION—*concld.*

2. ——— Alienation by manager—*Undivided family—Manager, position of—Effect of subsequent assent of co-parceners.* The Manager of a joint Hindu family is not, in the exercise of his powers, the agent of the family in the strict sense of the term and consequently no ratification of his act by the other members of the co-parcenary is possible The assent of the other members of the family to an alienation by the manager is only evidence of justifiable family necessity. Where, therefore, it is found that there was no such necessity, such assent is no evidence for that purpose. As, however, the property vests in the undivided family, the manager with the assent of the other members may give a good title to an alienee even though the alienation is not for any family necessity Such assent is not that of a principal to the acts of an agent but supplies the want of capacity on the part of the manager to alienate family property An alienation by a manager without justifiable necessity is void as regards the shares of the other members of the family and where such necessity exists it is valid in its entirety An assent by all the members at the time of alienation without taking part in it, will pass the property An assent by some only, though evidence of necessity will not, in the face of positive evidence of the impropriety of such alienation, suffice to pass their interests The subsequent assent if all the members will not apart from any question of estoppel, validate an alienation by the manager, which is void in its inception for want of justifiable necessity *Annamalai Chetty* v *Murugesa Chetty*, *I L R 26 Mad 544*, referred to *Unni* v. *Kunchi Amma*, *I L R 14 Mad 26, 28*, referred to. Kandasami Asari *v* Somaskanda Ela Nidhi, Ltd. (1910).
I. L. R. 35 Mad. 177

HINDU LAW—DEBT.

1. ——— Father's debt—*Execution of decree—Decree against father for damages—Liability of son—Mitakshara Law—Immoral or illegal debt.* A decree obtained by a person for damages on account of injury done to his crops, by the obstruction of a channel through which he was entitled to irrigate his lands, against one *B*, who was governed by the Mitakshara school of Hindu Law, could be executed on his death against his son, where it could not be said

HINDU LAW—DEBT—*contd*

that the decree obtained was due to an act of the judgment-debtor, which was a wanton interference with the rights of the decree-holder, and that the liability imposed thereby on the judgment-debtor was an illegal or immoral debt. CHHAKAURI MAHTON *v.* GANGA PRASAD (1911)

I. L. R. 39 Calc. 862

2. ——— Unsecured debt, contracted by limited owner, when binding on estate —*Will bind if made after due enquiry—Proof of due inquiry—Nature of right liable to be devested by adoption—Transfer of Property Act, s 38*- Unsecured debts contracted by a limited owner will be binding on the estate if incurred for purposes which will justify a charge on such estate. The rule laid down in the case of *Hanuman Pershad Panday* v. *Kooveri, 6 Mad. I. A. 393*, as to the sufficiency of a reasonable inquiry satisfying the creditor of the existence of reasonable necessity to validate a claim against the estate in the hands of a manager applies in the case of all loans whether secured or unsecured. Representations by the borrower are evidence of the existence of such necessity but are not generally in themselves sufficient to discharge the burden which rests upon the creditor of showing a reasonable inquiry as to the binding nature of the purpose for which the loan is contracted. In particular circumstances, however, they may suffice to shift the burden of proof to the person impeaching the debt or alienation If section 38 of the Transfer of Property Act is deemed to enact a rule as to reasonable inquiry in excess of what is required by the Privy Council in Hanuman Persad's case, it cannot override the Hindu Law settled by the Privy Council. The estate of a person whose right is liable to be devested by an adoption is not analogous to a life estate. It is that of a limited owner who represents the estate. MAHARAJA OF BOBBILI *v.* ZAMINDAR OF CHUNDI (1910).

I. L. R. 35 Mad. 108

3. ——— Widow and Reversioner —*Debt contracted by widow for constructing buildings not binding on estate—Compromise by widow not binding on reversioners, when advantage is secured at serious risk to estate—Decree on such compromise stands on no higher footing than the compromise—Dealing by reversioner with his reversionary right during life of widow, invalid—Minor not bound by admissions of guardian not connected with management of estate—Decree on compromise cannot be assumed to direct any thing forbidden by law.* Where a Hindu widow borrows money for constructing a house, which is not necessary for the management of the estate and which is situate outside the premises of the estate, the debt will not be binding on the reversion. The question whether the holder of a woman's estate will be justified in building a house so as to bind her reversioners, assuming that she could do so at all, will depend on the income of the estate and her means of repaying the debt so as not to injure the reversion. A compromise by a widow of a valid claim against the estate will not bind the

HINDU LAW—DEBT—*concld.*

reversioners when a larger amount than is due is agreed to be paid in instalments, the whole of the larger amount however being payable on default of any instalment. An adjudication against a widow after a fair contest with respect to a matter relating to the estate represented by her, will be binding on those who succeed her as owners: but a decree passed on a compromise into which she enters will have no higher effect against her successors than a contract entered into by her The reversioner, during the life of the female heir, has only a *spes successionis* or chance of succeeding if he survive her. Any transfer by him of such interest, is invalid. The power of a guardian is restricted, to the management of the minor's property and he cannot bind the minor by admissions which have no connection with the present management of the property, especially when made without receipt of any consideration on behalf of the minor. It cannot be assumed that a Court in sanctioning a compromise and passing a decree in pursuance of it, intended to do what was unlawful Where such a decree directs the sale of a minor's property in which the minor had only a *spes successionis* as reversioner, it must be assumed that it directed the sale only of such interest as the minor then possessed in the property, *which in the eye of law*, was *nil.* BHOGARAJU VENKATARAMA JOGIRAJU *v.* ADDEPALLI SESHAYYA (1912)

I. L. R 35 Mad 560

4. ——— Grandfather's debts—*Mitakshara—Grandson if liable for interest on grandfather's debts—Son's liability if may be thrown primarily on the share obtained by survivorship from father and grandfather.* A decree for mesne profits with interest was passed against *A* and *D* grandfather and father respectively of *R* after *R* was born. Subsequently on the death of *A* and *D* the decree-holder sought to execute the decree against the entire ancestral property in the hands of *R*. *R* claimed that in as much as the debt was his grandfather's he was not liable for the interest. *Held*, that the wrong being the joint act of the father and grandfather and the liability arising therefrom being that of the father as well as of the grandfather the son was liable for interest. That after the entire property vested in *R* on the death of *A* and *B* there was no distinction between what was obtained by *R* by survivorship from them and his own share so as to enable *R* to compel the decree-holder to proceed first against share of the father and grandfather to the exclusion of his own share. *Quœre:* Whether the rule in *Kishun Pershad* v. *Tipan Pershad I. L. R 34 Cal. 735 · s. c. 11 C. W. N. 613*, throwing the burden primarily on the share of the father applies to the case of a simple money debt as distinguished from a mortgage. RAMDEO PRASHAD SINGH *v.* GOPI KOERI (1911).

16 C. W. N. 383

HINDU LAW—ENDOWMENT.

1. ——— *Debuttur, private consensus of co-sharers if may change character*

HINDU LAW—ENDOWMENT—*concld.*

of treatment of property as secular, effect of—Partition of property by shebait if converts property into secular—Legal conversion, proof of. Where a private *debutter* had been partitioned between members of the family for the better enjoyment thereof and there had been sales and mortgages of portions of the property by some members but there was nothing to show that there was a consensus to give the property a different turn: *Held*, that the original *debutter* character of the property being established these facts did not operate to destroy its *debutter* character *Doorga Nath* v. *Ram Chandra, I L R 2 Calc. 341*, referred to. *Per* CHATTERJEE, *J.*—A partition of *debutter* property for the purpose of convenience of the user for the *sheba* is not a violation of the trust for the *sheba* of the property *Per* JENKINS, *C. J*—Where the original *debutter* character of a property is found in a suit to establish such character against one who claims under an original *shebait*, it lies upon the defendants to show the subsequent legal conversion of the land to the ordinary user of the property. *Juggut Moheenee* v *Rajendra Nath, 10 B. L R 19, 81*, referred to. DHARMA DAS MANDOL *v* GOSTA BEHARY MANDOL (1911). **16 C. W. N. 29**

2. ——— **Shebait, office of**—*Succession—Deed of appointment — Construction — "Shishya shishyanukrame."* Where it was provided by deed that the succession to the office of a *shebait* should be "*shishya shishyanukrame,*" (*i e*, disciple following disciple) *Held*, that upon a proper construction of the document there was nothing to prevent one disciple from succeeding a co-disciple in the line of the original *shebait* GOPAL CHANDRA CHAKRABARTY *v* RADHARAMAN DAS BABAJI (1911) **16 C W. N. 108**

HINDU LAW—GIFT.

1. ——— **Gift to daughter**—*Gift of immoveable property to daughter by father—Gift valid whether made at or after marriage* There is a moral obligation on a Hindu father to make a gift to his daughter on the occasion of her marriage A gift by a father to his daughter of a small portion of ancestral immoveable property is binding on the undivided family, whether such gift is made at or after the daughter's marriage SUNDARARAMAYYA. *v.* SITAMMA (1912) . **I. L. R. 35 Mad. 628**

2. ——— **Gift by widow**—*Mitakshara—Hindu widow—Gift—Consent of next reversioner not sufficient to validate gift in favour of sister's son Held*, that a gift of her deceased husband's estate made by a Hindu widow in possession thereof as such widow to her sister's son was invalid and could not be rendered operative by the consent of the next reversioner *Bajrangi Singh* v. *Manokarnika Bakhsh Singh, I. L. R 30 All 1*, discussed. ABDULLA *v* RAM LAL (1911) **I. L. R. 34 All. 129**

HINDU LAW—HEREDITARY PRIEST.

——— *Office of hereditary priest—Yajman vritti—Nibandha—Caste can appoint a priest—Grant from King not necessary—Removal of priest not allowed except on valid ground—Caste—Caste question—Bombay Regulation II of 1827—Civil Court—Jurisdiction.* Under Hindu Law, the office of hereditary priest (*yajman vritti*) is a *nibandha* and is ranked among the hereditary rights of immoveable property. The office of hereditary priest, where it is held in relation to a family, owes its origin, continuance, and binding character to custom and not to a grant from the King or agreement between the parties Where the office is one of hereditary family priest, the mere fact that in any individual case it has been created originally by the caste for the purposes of families belonging to it cannot affect it, because the office carries with it a hereditary right in the nature of property, and the incumbent cannot be deprived of it by anyone, unless he has become a *patita* (outcaste) or has declined to officiate. The caste in such a case makes the selection for the families of its members, and when any family accepts the officiator as its hereditary family priest, custom annexes to the office certain incidents in the nature of civil rights as against the family, which neither the family nor the caste has power to annul except on the ground of some offence under the Hindu Law committed by the officiator, or of refusal by the officiator to discharge his duty as family priest Where a caste has appointed a man to a mere priestly office, there is doubtless no right of property conferred His continuance or removal is exclusively within the competence of the caste and it is a caste question. But it is difficult where the office of hereditary priest is created for the performance of religious ceremonies in certain families, provided, according to Hindu Law, either the caste or the families have power to create such an office and give it the character of immoveable property. GHELABHAI GAVRISHANKAR *v* HARGOWAN RAMJI (1911). **I. L. R. 36 Bom. 94**

HINDU LAW—INHERITANCE.

See HINDU LAW—SUCCESSION.

1. ——— **Impartible estate governed by rule of primogeniture**—*Inheritance—Estate devised to widow of owner—Suit by reversioner—Compromise of suit by widow and reversioner—Descent of estate governed by the compromise and not by will.* The owner of an impartible estate governed by the rule of primogeniture died leaving a will by which he gave an absolute estate to his widow, against whom *S*, the next reversioner, brought a suit on the ground that the will was invalid and that he was entitled to possession of the estate. In that suit the parties came to a compromise, by the terms of which it was agreed that the widow should hold for her life the position of "*gaddinashin,*" paying *S* a monthly allowance, and that after her death *S* or "any representative of his who may be living at that time will be the absolute owner of all the moveable and immoveable properties and will occupy the *gaddi.*" *S* predeceased the widow leaving no male issue and

HINDU LAW—INHERITANCE—*contd.*

without having made any disposition by will or otherwise of his interest in the estate. On the death of the widow in possession, the widow of *S* sued to recover the estate from members of her husband's family who had possession of it. *Held*, by the Judicial Committee (affirming the decision of the High Court), that the rights of the parties depended not on the will but on the compromise, the terms of which gave *S* a vested interest in the estate, which retained it character of impartiability, and on the death of *S* descended not to his widow (the appellant) but to the respondent, his heir, according to the rule of primogeniture. LEKHRAJ KUNWAR *v.* HARPAL SINGH (1911)

I. L. R. 34 All. 65

2. ——— Maintenance—*Mitakshara—Joint Hindu family—Mother's share on partition of joint family property between her and her sons after father's death—Stridhan* According to the Mitakshara there is no substantial difference in principle between a woman's property acquired by inheritance and that acquired by partition *Held*, therefore, reversing the (decision of the courts in India), that the share which the mother in a joint Hindu family obtains after the death of the father on partition of the joint family property between the mother and the sons, is not her *stridhan*, but is given for her maintenance, and on her death it devolves upon the heirs of her husband and not upon her own heirs. *Debi Mangal Prasad Singh* v. *Mahadeo Prasad Sing*, *I L. R. 32 All 259*, and *Chhiddu* v *Naubat*, *I L. R 24 All. 67*, overruled DEBI MANGAL PRASAD SINGH *v* MAHADEO PRASAD SINGH (1912).

I. L. R. 34 All. 234

3. ——— Unchastity—*Inheritance—Wife—Unchastity during coverture—Condonation by husband—Husband and wife* Under Hindu Law, a widow is not disqualified from inheriting to her husband on the ground of her unchastity during coverture, if it is condoned by her husband Where the husband and wife have lived together, without any open breach of marital relations up to the husband's death, it would be a dangerous principle to allow mere outsiders to come in and impute acts of unchastity to the wife during the period of her coverture GANGADHAR PARAPPA *v.* YELLU (1911). . **I. L. R. 36 Bom. 138**

4. ——— Paternal grandmother—*Inheritance—Estate taken by her is limited estate—Women entering family by marriage take limited estate.* Under Hindu Law the paternal grandmother, inheriting to her grandson, takes a limited estate for life. All the women who belong to a family by marriage, not by birth, take a limited estate in the property which they inherit from any male member of that family DHONDI *v.* RADHABAI (1912)

I. L. R. 36 Bom. 546

5. ——— Widow's right to inherit—*Inheritance—"Malignant hostility" to husband, if disqualifies a widow from inheriting—Hostility, meaning of.* The only qualification necessary for a widow to entitle her to succeed to her husband in physical chastity. Where a wife refused to come to her husband's house when sent for after he had married for a second time: *Held*, that such conduct was not evidence of such hostility to her husband as disentitled her to her inheritance where there was no evidence of any misconduct KHETTERMONI DASSI *v* KADAMBINI DASSI (1912)

16 C W. N. 964

HINDU LAW—JOINT FAMILY.

1 ——— Legal necessity—*Mitakshara—Joint Hindu family—Father committed to the Court of Session—Loan taken for his defence Held*, that the necessity of raising money to pay for the defence of the head of a joint Hindu family committed to the Court of Session on a serious criminal charge was a valid legal necessity such as would support a mortgage of the family property executed by the father and one of his sons for such purpose *Thandradeo* v *Mata Prasad*, *I L R 31 All 176*, *Luchmun Koour* v. *Mudaree Lall*, *5 S D. A. N-W. P 327*. and *Duleep Singh* v *Srce Kishoon Panday*, *4 N.-W. P H. C. Rep. 83*, referred to. BENI RAM *v.* MAN SINGH (1911) . . . **I. L. R. 34 All. 4**

2. ——— *Mitakshara—Joint Hindu family—Money borrowed by father at a high rate of interest—Legal necessity—Burden of proof.* When money is borrowed by the father of a joint Hindu family on the security of the family property at a very high rate of interest, it is for the lender seeking to enforce his claim to prove not only that there was necessity for borrowing the money, but also that there was necessity for borrowing it at an exorbitant rate of interest. *Chandradeo* v *Mata Prasad*, *I L R 31 All. 176; Hurro Nath Rai Chaudhuri* v. *Randhar Singh*, *I L R 18 Calc 311*, and *Kumeswar Pershad* v. *Run Bahadur Singh*, *I. L R 6 Calc 843*, referred to. NAND RAM *v.* BHUPAL SINGH (1911)

I. L. R. 34 All. 126

3. ——— ——— *Mitakshara—Joint Hindu family—Debt incurred by managing member of family—Presumption as to family necessity or benefit—Burden of proof.* There is no presumption that a debt contracted by the manager of a Hindu firm or family is contracted for the benefit of the firm or family, and the plaintiff who seeks to bind the other members of the joint family will have to prove that it was a debt contracted for their benefit or with their consent, or that there was an urgent family necessity therefor. *Soiru Padmanabh Rangappa* v *Narayanrao bin Vithalrao*, *I L. R 18 Bom 520; Sunkur Pershad* v *Goury Pershad*, *I. L. R 5 Calc. 321; Nagendra Chandra Dey* v. *Amar Chandra Kundu*, *7 C. W. N 725*, and *Krishna Ramaya Naikv. Vasudeo Venkatesh Pai*, *I. L. R. 21 Bom 1808*, referred to. *Sheo Pershad Singh* v. *Saheb Lal*, *I. L. R. 20 Calc. 453*, distinguished. GANPAT RAI *v* MUNNI LAL (1911).

I. L. R. 34 All. 135

HINDU LAW—JOINT FAMILY—*contd.*

4. ——— Mortgage—*Purchase of mortgaged property by managing members—Suit for sale against managing members only—Civil Procedure Code (1908), order XXXIV, rule 1.* Where in a suit for sale on a mortgage the defendants mortgagors were the managing members of a joint Hindu family who in that capacity had purchased the mortgaged property, it was *held* that the family was sufficiently represented by the managing members and that the suit would not fail by reason of the non-joinder of the other members of the family. HORI LAL *v.* MUNMAN KUNWAR (1912) **I. L. R. 34 All. 549**

5 ——— *Joint Hindu family—Mortgage for the benefit of joint family—Suit for sale by managing member alone—Parties—Civil Procedure Code, 1908, Order XXXIV, rule 1.* Where in a suit for sale on a mortgage executed in favour of the manager of a joint Hindu family the plaintiff was the then managing member of the family, it was *held* that he was entitled in that capacity to maintain the suit and that it would not fail by reason of the non-joinder of the plaintiff's son, who was joint with him *Hori Lal* v *Munman Kunwar, I L R. 34 All. 549*, referred to MADAN LAL *v.* KISHAN SINGH (1912) **I. L. R. 34 All. 572**

6. ——— *Mitakshara—Mortgage of property given to father and son—Subsequent purchase of portion of property by grandson who was separate in mess and business out of his self-acquisition—Adverse possession—Purchase as of remaining share by mortgagee at execution sale had by another creditor—Extinction of mortgagor's title.* Some time after a mortgage had been executed of immoveable properties in favour of *R* and *S*, father and son, members of a joint Hindu family governed by the Mitakshara, a widow of the mortgagor sold such right and title, if any, as she had in half of the property of the mortgagor to *B*, son of *S*, who was joint with *R* and *S* at the time of the mortgage, but who prior to his purchase had ceased to be joint in food and business with *S*, though there was no partition, and having received a present of a considerable sum of money from his grandmother, had been carrying on money-lending business on his own account and had found the purchase-money out of his separate self-acquired property. *B* got possession after his purchase and continued in possession for considerably over 12 years *Held*, that the possession of the property by *B* was not that of a mortgagee but adverse to that of the mortgagee and the title of the mortgagor's representatives to redeem was lost by adverse possession. The remaining half share was sold in execution of a decree obtained by another creditor of the mortgagor in a suit brought against his representatives and purchased by *S* and passed by succession to *B's* heirs. *Held*, that the plaintiffs who claimed through the mortgagee had failed to establish any title by way of redemption or otherwise to any interest in the mortgaged property and his suit should be dismissed. PARBATI *v.* SAIYID MUHAMMAD MUZAFFAR ALI KHAN (1912) . . . . **16 C. W. N. 913**

HINDU LAW—JOINT FAMILY—*concld.*

7. ——— Payment to one member of joint family, effect of—*Joint family—Right of manager of undivided family to sue on behalf of the family* Payment to one member of an undivided Hindu family or to one of several joint creditors will not operate as a payment to all the members or creditors if the payment is fraudulently made to one and not for the benefit of all The manager of a joint family has, as such manager, the right to represent the family in suits A suit by him as such manager on behalf of the joint family will be maintainable without making the other members parties to the suits. *Kishen Prasad* v *Har Narain Singh, 15 C W. N 321*, followed SHEIK IBRAHIM THARAGAN *v.* RAMA AIYAR (1912). . **I. L. R. 35 Mad. 685**

8. ——— Partition—*Mitakshara—Joint family property—Acquisition by joint labour of co-parceners—Exclusion of a member—Suit for partition—Limitation* Where plaintiff sued as a co-parcener for partition of his share in joint family property and the defence was that the plaintiff's father was expelled from the family for misconduct, and that his share in the family property was given to him in 1874, and it was proved that the plaintiff who in 1874 was a child and left the family with his father and mother, re-appeared in the village in 1889 on his father's death and was then recognised as a member of the family and was not excluded till within five or six years of the suit when there was exclusion from commensality but no partition of the family property: *Held*, that the defence failed and the plaintiff's suit should succeed. JEOLAL MAHTON *v* LOKE NARAYAN MAHTON (1912). . . . . **16 C. W. N 466**

9. ——— Rights to well and water—*Indivisible rights—Presumption—Partition of property which is joint* Under Hindu Law, rights to water and wells belonging to a joint family are indivisible, if they are numerically unequal; and, after partition, these must be enjoyed by the separated co-parceners by turns. GOVIND ANNAJI *v.* TRIMBAK GOVIND (1910) **I. L. R. 36 Bom. 275**

HINDU LAW—LEGAL NECESSITY.

See HINDU LAW—JOINT FAMILY

——— ——— ——— - - - *Widow—Alienation—Legal necessity—Performance of pilgrimage—Betrothal of daughter.* Under Hindu Law, the expenses incurred by a Hindu widow in performing pilgrimage or in the betrothal of her daughter constitute legal necessity As regards pilgrimage the question in every case must be whether it was for the spiritual benefit of her husband, in the performance of her duty to his soul, and whether the expenses incurred are reasonable or were made honestly having regard to the estate, the status of the family, and other considerations which it is customary for Hindus to take into account

HINDU LAW—LEGAL NECESSITY— *concld.*

in accordance with their religious beliefs and usages GANPAT VALAD DHAKU *v.* TULSIRAM (1911). **I. L. R. 36 Bom. 88**

HINDU LAW—MAINTENANCE.

——————— *Maintenance—Right to maintenance of widow in undivided family enforceable against the whole family and not only against the branch to which the husband belonged* Where a member of an undivided family comprising several branches dies, his widow's rights to maintenance is enforceable against the whole family and not only against the branch to which her husband belonged and which took by survivorship his undivided share. A suit for partition, subsequent to the widow's suit for maintenance, will not affect her right as aforesaid. SUBBARAYALU CHETTI *v.* KAMALAVALLITHAYARAMMA (1911). **I. L. R. 35 Mad. 147**

HINDU LAW—MARRIAGE.

See PENAL CODE (ACT XLV OF 1860), S. 498 . . **I. L. R. 34 All. 589**

——————— *Marriage of a daughter of deceased Hindu may be performed by his widow—Reasonable marriage expenses recoverable from joint family property.* The widow of a deceased member of an undivided Hindu family is entitled to perform the marriage of a daughter of the deceased even when the father of the deceased and the other male members of the family have not wrongly or improperly refused to perform such marriage, and she is entitled to recover the reasonable expenses of such marriage out of the joint family property. RANGANAIKI AMMAL *v.* RAMANUJA AIYANGAR (1912). . . **I L. R. 35 Mad. 728**

HINDU LAW—MIGRATION.

——————— **Migration**—*Mitakshara or Mithila law, presumption as to applicability of.* Where a person governed by the Mitakshara law removed to a district governed by the Mithila law the presumption was that he took his personal law with him, and where he inherited property from his maternal grandfather who was governed by the Mithila law, this property equally with his paternal property would be governed by the Mitakshara law and not by Mithila law. BHAGABATI KOER *v.* SAHUDRA KOER (1911) . **16 C. W. N. 834**

HINDU LAW—MINOR.

1. ——————— **Will**—*Minor—Capacity to make will—Indian Majority Act (IX of 1875), s. 3.* A Hindu minor, who has not attained majority as provided in the Indian Majority Act, 1875, is not competent to make a will of his or her property. BAI GULAB *v.* THAKORELAL (1912) **I. L. R. 36 Bom 622**

2. ——————— **Liability of minor for debts contracted by agent of guardian**—*Guardian of minor who is sole owner of trading firm* A minor member of a joint Hindu trading family

HINDU LAW—MINOR—*concld.*

is liable on a bill drawn by the manager, his liability being limited to his share in the business on the analogy of s 247 of the Contract Act (IX of 1872). This rule, however, is applicable to minors who are sole owners of a business only subject to the general principles regulating the relationship between guardian and ward. In India, a guardian has no power to bind his ward by a personal covenant Although a widow and natural guardian may, in India, carry on a family business belonging to a minor son by a manager, such guardian and not the minor is the person personally liable on contracts entered in the course of business. Creditors of the business have no right of direct recourse against the minor, but as the guardian will be entitled to indemnity for liabilities properly incurred out of the assets of such business, creditors of the business can proceed directly against such assets for liabilities properly incurred by the guardian. A guardian cannot invest an agent with powers larger than are reasonably proper for carrying on the business; and where as a consequence of giving such powers the guardian has become involved in liability for the fraud of the agent, the guardian has no right of indemnity against the assets of the minor nor are the creditors entitled to claim such right through the guardian. SANKA KRISHNAMURTHI *v* THE BANK OF BURMA (1912) . . . **I. L. R. 35 Mad. 692**

HINDU LAW—PARTITION.

1. ——————— **Grandmother**—*Mitakshara—Whether grandmother entitled to share in the case of a partition between father and sons. Held*, that upon a partition between a father and his sons, the grandmother, that is, the father's mother, does not get a share in the case of a family governed by the Benares school of the Mitakshara law. *Radha Kishen Man* v. *Bachchaman, I. L R. 3 All. 118*, followed. *Sheo Dayal Tewaree* v. *Judoo Nath Tewaree, 9 W. R. 61, Badri Ray* v. *Bhagwat Narain Dobey I. L. R 8 Calc 649*, and *Shibbosoondery Dabia* v. *Bussomutty Dabia, I. L. R. 7 Calc. 191*, distinguished SHEO NARAIN *v.* JANKI PRASAD (1912) **I. L. R. 34 All. 505**

2. ——————— **Father's debts**—*Suit for partition—Decree for father's personal debt not illegal or immoral—Decree to be enforced by sale in execution of the entire family estate during father's lifetime—Debt antecedent to the institution of the suit.* A son brought a suit against his father and the father's creditors for partition of his half share in certain ancestral properties and for a declaration that the incumbrances by way of mortgages created by his father were not binding on him and against his share. About the time the partition suit was filed, the father's creditors also filed suits to enforce their mortgages *Held*, that a decree for a personal debt of the father not illegal or immoral might be enforced by sale in execution in his lifetime of the entire family estate. *Meenakshi Naidu* v. *Immudi Kanaka, L. R 16 I. A. 1*, followed. DATTATRAYA VISHNU *v* VISHNU NARAYAN (1911) . . . **I. L. R. 36 Bom. 68**

HINDU LAW—PARTITION—*concld.*

3. ——— Right of way—*Impartible property—Presumption of law—Implied reservation of right of way on partition of estate—Mitakshara—Mayukha.* Under Hindu Law in the absence of anything to show that at the partition the passage was allotted to either one party or the other exclusively, the presumption is that it continued joint and undivided even after the partition That presumption must be rebutted by clear proof by the party who alleges that the passage was not reserved as joint but was divided and allotted to him exclusively as his share. According to the Mitakshara and the Vyavahara Mayukha, rights of way and rights to wells and water belonging to a joint family are indivisible : and if there is no evidence that at the partition of the family estate they were divided, the law will hold that they continued to retain the character of indivisibility attached to them by law having regard to the nature of the rights in question. NATHUBHAI DHIRAJRAM *v* BAI HANSGAVRI (1912) . . . **I. L. R. 36 Bom. 379**

4. ——— Decree for partition, preliminary—*Effect of appeal against such decree—Decree effects severance, which is not affected by the subsequent appeal* A preliminary decree directing a partition effects severance of the joint family and the divided status is not affected by filing an appeal against such decree. Subsequent births or deaths cannot deprive any of the parties or their representatives of their shares allotted to them by such decree. *Subraya Mudali* v. *Manicka Mudali, I. L. R 19 Mad 345,* followed. *Sakharam Mahadev Dange* v. *Hari Krishna Dange, I. L. R 6 Bom. 113,* dissented from. *Joy Narain Giri* v *Girish Chunder Myti, I. L. R 4 Calc 434,* referred to. Such a decree, like other decrees, if right at the time it was passed, cannot be varied by reason of events subsequently happening THANDAYUTHAPANI KANGIAR *v.* RAGUNATHA KANGIAR (1911). . **I. L. R. 35 Mad. 239**

HINDU LAW—STRIDHAN.

1. ——— Maiden's stridhan—*Succession—Mitakshara—Father's brother's son—Sister—Sister's son* Under the Mitakshara school of Hindu law, a sister (father's daughter) and a sister's son (father's daughter's son) are entitled to succeed to a maiden's *stridhan* in preference to a father's brother's son. *Per* N. R. CHATTERJEA, *J.*—Under the Mitakshara law, in the absence of any rule determining the nearness among relations of the father in case of succession to a maiden's *stridhan,* the question should be decided by analogy to the order of succession to the *stridhan* of a childless woman married in a disapproved form, so far as it is applicable, for in both cases the succession is confined to the father's family. The *stridhan* of a childless woman married in a disapproved form devolves, after the father, in the same manner as if it had belonged to the father himself, and the succession follows the order laid down in the text of Yajnavalkya regulating obstructed succession. *Quære* Whether the son or grandson of the father in such a case takes before the father or after him and before the other heirs mentioned in the said text. DWARKA NATH ROY *v.* SARAT CHANDRA SINGH ROY (1911) . **I. L. R. 39 Calc. 319**

2. ——— *Deceased Hindu maiden—Stridhan—Competing heirs—Father's sister—Father's male gotraja sapindas five or six degrees removed—Preference to father's sister.* In the case of a deceased Hindu maiden leaving surviving her father's sister and her father's male, *gotraja sapindas* five or six degrees removed, her *stridhan* goes to her father's sister in preference to his said male *gotraja sapindas.* TUKARAM *v.* NARAYAN RAMCHANDRA (1912).

I. L. R. 36 Bom. 339

3. ——— Devolution—*Mitakshara—Mayukha—Stridhan—Daughter's sons take severally and not jointly—Co-parcenary—Basic notion of co-parcenary—Obstructed and unobstructed succession—Estate by partition—Estate by birth—Dayada—Rikhta—Interpretation—Self-acquired property.* Property inherited by sons from their mother is not a joint estate but a tenancy-in-common, according to both the Vyavahara Mayukha and the Mitakshara. The basic principle of a joint tenancy or co-parcenary under Hindu law explained. A joint tenancy is property inherited as an unobstructed succession and is called *rikhta.* It devolves on the heirs as a co-parcenary. A tenancy-in-common is property inherited as an obstruction and is called *samavibhaga,* because when the inheritance falls in, it devolves on the heirs as a divided estate The terms *self-acquired property,* as distinguished from *joint property,* explained. Property originally self-acquired, because acquired without detriment to joint ancestral estate, becomes joint when it has been mixed with and treated as part of the said joint estate by the co-parceners. BAI PARSON *v.* BAI SOMLI (1912). . **I. L. R. 36 Bom. 424**

HINDU LAW—SUCCESSION.

1. ——— Impartible property—*Mitakshara—Succession—Impartible property governed by the rule of primogeniture nevertheless joint property.* Where ancestral property is impartible and is held by a single member of the family, all the members of the family must be deemed to be joint in estate and the rule of succession to the property is the same as that which governs the case of partible property, so that a junior member of the family, who gets maintenance from the person holding the impartible estate, succeeds upon his death to the estate by right of survivorship Whatever may be the powers of alienation of the holder of an impartible estate, the succession to it is governed not by the rule which applies to separate property but by the rule of survivorship. Therefore the person who succeeds to the estate does not do so as the heir or legal representative of his predecessor and the estate cannot be regarded as the assets of the last previous holder. *Harpal Singh* v. *Bishan Singh,*

HINDU LAW—SUCCESSION—*contd*

6 A. L. J. 753, followed *Raja of Kalahasti* v. *Achigadu*, *I L R 31 Mad 454*, and *Zamindar of Karvetnagar* v *Trustee of Tirumalai*, *I L R 32 Mad 429*, dissented from. INDAR SEN SINGH *v.* HARPAL SINGH (1911) **I. L. R. 34 All. 79**

2. ——— Great-grandson of the grandfather—*Mitakshara—Succession — Grandson of the great-grandfather.* According to the Mitakshara law the three immediate descendants of the grandfather succeed in preference to the great-grandfather and his descendants, and the great-grandson of the grandfather is a preferential heir as against the grandson of the great-grandfather The following cases were referred to in the judgments delivered —*Kalian Rai* v *Ram Chander*, *I L R 24 All. 128*, *Rutcheputty Dutt Iha* v. *Rajunder Narain Rae*, *2 Moo I A. 133*, *Kashibai Ganesh* v *Sitabai Raghunath Shivram*, *13 Bom L. R 552*; *Rachava* v *Kalingapa*, *I. L R 16 Bom 716*, *Kureem Chand Gurain* v. *Oodung Gurain*, *6 W. R 158*, *Chinnasami Pillai* v. *Kunju Pillai*, *I L R. 35 Mad. 152*, *Bhyah Ram Singh* v. *Bhyah Ugur Singh*, *13 Moo I. A. 373*, and *Suraya Bhukta* v *Laksaminarasamma I L R 5 Mad. 291.* BUDDHA SINGH *v* LALTU SINGH (1912) . . **I. L. R. 34 All. 663**

3. ——— Step-sister—*Vyavahara Mayukha—Succession—Paternal uncle—Priority.* According to Hindu Law, as administered under the Vyavahara Mayukha, the half-sister of the propositus is entitled to succeed in preference to his paternal uncle. TRIKAM PURSHOTTAM *v* NATHA DAJI (1911) . **I. L. R. 36 Bom. 120**

4. ——— Maiden's stridhan—*Mitakshara—Stridhan—Father's brother's son—Sister—Sister's son* Under the Mitakshara school of Hindu Law, a sister (father's daughter) and a sister's son (father's daughter's son) are entitled to succeed to a maiden's *stridhan* in preference to a father's brother's son. *Per* N R. CHATTERJEA, J. Under the Mitakshara law, in the absence of any rule determining the nearness among relations of the father in case of succession to a maiden's *stridhan*, the question should be decided by analogy to the order of succession to the *stridhan* of a childless woman married in a disapproved form, so far as it is applicable, for in both cases in succession is confined to the father's family. The *stridhan* of a childless woman married in a disapproved form devolves, after the father, in the same manner as if it had belonged to the father himself, and the succession follows the order laid down in the text of Yajnavalkya regulating obstructed succession. *Quære* · Whether the son or grandson of the father in such a case takes before the father or after him and before the other heirs mentioned in the said text. DWARKA NATH ROY *v* SARAT CHANDRA SINGH ROY (1911) **I. L. R. 39 Calc. 319**

5. ——— Succession among collateral sapindas—*Mitakshara Law—'Brother's son,' in Mitakshara does not include brother's grandson—Under Mitakshara Law, test in determining*

HINDU LAW—SUCCESSION—*concld.*

priority among unenumerated heirs is not spiritual efficacy but nearness of relationship—Brother's great-grandson succeeds in preference to uncle's grandson. The word 'sons' in the text of the Mitakshara Chapter II, s I, verse 2, s IV, verses 7 and 8, and in s. V, verse 1, should not be given an extended meaning so as to include the grandsons. In enumerating therefore the heirs in the ascending line or among collaterals in the passages above stated, Vignaneswara did not mean to include in the words 'sons' the grandsons as well whether of the brother, the paternal uncle or the great-uncle Such grandsons cannot claim rights of inheritance as heirs enumerated in the above texts. *Lakshmi Narasamma* v. *Jagannadham*, *I. L. R 5 Mad. 291*, approved. *Kalian Rai* v. *Ramachandra*, *I L. R 24 All. 128*, not followed. In the case of competition between sapindas not enumerated in the above texts, the nearest sapinda entitled to succeed must be determined not by considerations of superior religious efficacy but by nearness of relationship and preference should be given to the sapinda belonging to the nearer line. The great principle pervading the law of inheritance under the Mitakshara system is that the nearer line excludes the more remote. The brother's great grandson succeeds in preference to the uncle's grandson. CHINNASAMI PILLAI *v.* KUNJU PILLAI (1911) . **I. L. R. 35 Mad. 152**

6. ——— Stridhan succession to—*Step-sister's son as heir.* A step-sister's son is a preferential heir to a woman's *stridhan* to the daughter's son of the great-grandson of the great-grandfather of the woman's husband. SASI BHUSAN LAHIRI *v.* RAJENDRA NATH JOARDAR (1912) . . . . **16 C. W. N. 1094**

HINDU LAW—SURETY.

——— *Father's liability as surety—Whether son is liable to pay debt incurred by father as surety* Under the Hindu Law, a son is liable for a debt incurred by his father as a surety *Tukarambhat* v. *Gangaram Mulchand Gujar*, *I L. R. 23 Bom 454*, and *Maharaja of Benares* v. *Ramkumar Misir*, *I. L. R. 26 All. 611*, referred to. RASIK LAL MANDAL *v.* SINGHESWAR RAI, (1912). . . **I. L. R. 39 Calc. 843**

HINDU LAW—TRUST.

——— **Trust created by will**—*Trust coming into being at a future date—Duty of heirs to carry out the trust—Civil Procedure Code (Act XIV of 1882), s. 539—Trust for public religious purpose—Dedication of property as shivapana—Ejectment of trespassers from the trust property—Court—Jurisdiction* Where a Hindu who had directed a trust of his property for a religious purpose dies before giving effect to it, the Hindu law authorises his heir to take steps for carrying out his directions after recovering the property from a trespasser. Where the testator merely directs that his property should be endowed for a certain purpose at a certain time by certain persons after his death, then until the arrival of the time and

the complete dedication of it in the manner and for the object pointed out by the testator, the property must be regarded, in the eye of law, as part of his estate but impressed with a trust or an obligation on the part of those taking that estate as heirs to carry out his directions at the appointed time He who succeeds him as heir has the right to do what the owner himself would have done or has directed to be done so as to complete the trust with the sanction of the Court, if necessary. Before he can do that, he must first secure the property from the wrong-doer into whose possession it has passed. GHELABHAI GAVRISHANKAR *v* UDERAM ICHARAM (1911)

I. L. R. 36 Bom 29

HINDU LAW—WIDOW.

1. ———— **Partition**—*Widow—Co-widow—Right to enforce partition when joint enjoyment impossible.* Although Hindu widows taking a joint interest in the inheritance of their husband have no right to enforce an absolute partition of the joint estate between them, yet where the widows cannot go on peaceably in the enjoyment of the property, they can by mutual agreement or otherwise separately hold the property, although they have no right to partition in the proper sense of the term, and the share of one will go by right of survivorship to the other notwithstanding the separation. *Gajapathi Nilamani* v *Gajapathi Radhamani, I. L. R 1 Mad 290; Kathaperumal* v. *Venkabai, I L. R 2 Mad 194,* and *Bhagwandeen Dubey* v. *Myna Baee, 11 Moo. I. A. 487,* referred to. CHHITTAR KUNWAR *v.* GAURA KUNWAR (1911) . **I. L. R. 34 All 189**

2. ———— **Gift**—*Hindu widow—Suit by remote reversioner to set aside alienation by widow—Immediate reversioner a female having a life estate only—Acceleration of estate. N* died leaving a widow *W,* a daughter *R D,* and a daughter's son *K S. W* during the life-time of R D, made a gift of the property to K S. *Held,* on suit by other reversioners more remote than *K S* for a declaration that the gift was not binding on them, that the suit would lie The question of acceleration of *K S's* estate would not arise because at the date of the gift the donee was not the next reversioner *Bal gobind* v *Ram Kumar, I L. R. 6 All. 431, Hanuman Pandit* v *Jota Kunwar, All Weekly Notes, 1908, 907,* and *Abinash Chandra Mazumdar* v *Harinath Shaha, I. L. R. 32 Calc 62,* followed. *Madari* v *Malki, I L. R 6 All. 428,* and *Ishwar Narain* v *Janki, I L R 15 All. 132,* dissented from. *Rani Anand Koer* v *The Court of Wards L. R 8 I A., 14, I. L R 6 Calc. 764,* referred to. RAJA DEI *v.* UMED SINGH, (1912).

I. L. R. 34 All. 207

3. ———— **Reversioners**—*Hindu widow—Decree fairly obtained against widow binding on reversioners, although the widow did not contest the suit.* A decree in a suit against a Hindu widow, respecting property of her husband, of which she is in possession as such widow, may

be binding on the reversioners notwithstanding that the widow did not contest the suit, provided that the plaintiff's case was properly and fairly stated and the widow had reasonable opportunities, of which she did not choose to avail herself, of defending the suit. GUR NANAK PRASAD *v* JAI NARAIN LAL (1912).

I. L. R. 34 All. 385

4 ———— **Maintenance**—*Widow—Arrears of maintenance—Demand and refusal—Residence in deceased husband's family house—Residence elsewhere for improper purpose* Arrears of maintenance cannot be refused to a Hindu widow in consequence of failure to prove demand and refusal. A Hindu widow is not bound to reside in her deceased husband's family house and does not forfeit her right to maintenance by residing elsewhere, unless she leaves the house for an improper purpose. *Ambabai kom Balaji Vinayak Kale* v *Ramchandra Balaji Kale, (1895), P. J. 44,* followed *Gurianna Murkundi Naik* v. *Honama, I. L R. 15 Bom. 236,* referred to. PARWATIBAI *v.* CHATRU LIMBAJI (1911)

I. L. R. 36 Bom. 31

5. ———— *Widow—Right to maintenance—Grant of arrears—Exigencies of the case* By Hindu Common Law, the right of a widow to maintenance is one accruing from time to time according to her wants and exigencies. The grant of arrears of maintenance depends on the wants and exigencies of the widow as proved in each particular case RANGUBAI *v.* SUBAJI RAMCHANDRA (1912). **I. L. R. 36 Bom. 383**

6. ———— **Widow, alienation by**—*Transfer to reversioner—Condition that properties should not be transferred during widow's life and maintenance paid out of income—Deed of settlement—Restraint on alienation—Transfer by reversioners valid but subject to widow's right to maintenance—Notice.* Where a Hindu widow by a deed of family settlement transferred properties inherited from her husband to the latter's reversionary heirs subject to the conditions: (i) that a fixed monthly allowance should be paid to her out of the income of the estate transferred, and (ii) that the reversionary heirs should have no right to transfer any immoveable property belonging to the estate during her life-time *Held,* that the latter condition was void as imposing a restraint on a transferee of an absolute interest in property as to the manner in which such interests was to be applied or enjoyed by him within the meaning of s 11 of the Transfer of Property Act *Quære* Whether the doctrine of English law that a condition or conditional limitation upon alienation, limited in time, is bad when attached to a vested interest is applicable in view of s 10 of the Transfer of Property Act. *Held,* as to the other condition, that persons in whose favour the reversionary heirs executed mortgages must be taken to have had notice of all the covenants in the deed of settlement and that the widow was entitled to a declaration that her right to receive maintenance under that deed was

HINDU LAW—WIDOW—*contd.*

in no way affected by the mortgages CHAMARU SAHU *v* SONA KOER, (1911) . **16 C. W. N. 99**

7. ——— Widow's estate—*Widow, agent appointed by—Profits, realised but not paid, accountability for, to reversioner—Widow's savings* An agent appointed by a Hindu widow is bound to account to the reversioner for profits realised by him in the widow's life-time and not paid to her. Such profits cannot be presumed to be the widow's *stridhan* but must be treated as her savings which not having been disposed of followed the estate. *Soorjemoney* v. *Dinobundoo, 9 Moo I. A. 123; Revett Carnac* v. *Jusbai, I L R 10 Bom 428, Paddo Monee* v *Dwarka Nath, 25 W. R 335,* referred to. *Isri Dut* v *Hansbutti, I L R. 10 Calc. 324,* followed. SRIDHAR CHATTOPADHYA *v.* KALIPADA CHUCKERBUTTY (1911) **16 C. W. N 106**

8. ——— Widow's estate—*Accumulations, rights of a Hindu widow to—Husband's property repurchased out of income, if absolute property of the widow—Unrealised rents, if absolute estate of the widow and assets liable for her personal debts* The true test to determine whether accumulations in the hands of a Hindu widow were her absolute property or an accretion to the husband's estate, is the intention of the widow, *i e*, whether she intended to treat them as part of her husband's estate or as temporary savings to be spent by her subsequently Where a *howda* which was part of the husband's estate had passed into the hands of a stranger and had been recovered by the widow out of the savings of the estate, the inference was that she intended to treat it as part of her husband's estate Unrealised rents in the hands of tenants cannot be treated as temporary savings by the widow on her own account, but should be looked upon as an accretion to her husband's estate *Rivett Carnac* v. *Jejibai, I. L R 10 Bom. 478,* distinguished They were not assets in the hands of her daughter liable for the widow's personal debts. BHAGABATI KOER *v.* SAHUDRA KOER (1911) . **16 C. W. N. 834**

9. ——— Widow's estate—*Rent-decree against Hindu widow and her co-sharers, paid off by latter—Decree for contribution by latter against widow—Sale in execution of decree if affects reversionary interest—Personal liability notwithstanding charge* Where a suit for arrears of rent of a taluk which accrued due after the death of one of the co-sharers therein was brought against his widow and other co-sharers and the decree obtained in the suit was discharged by the other co-sharers: *Held,* that a sale of the share of the taluk held by the widow in execution of a decree obtained by her co-sharers in a contribution suit against her, did not affect the title of the reversionary heir. The liability of the widow for the rent in question should be regarded as a personal liability which ought not to be held to attach to the reversion unless and until the landlord proceeded to bring the tenure to sale under the special provisions of the rent law. *Brojo Lal Sen* v. *Jiban Krishna Roy, I. L. R. 26 Calc 200; Baijun Doobey* v *Brij Bhookun Lall, I. L R 1 Calc. 133, s c., 24 W. R. 306, L R 2 I A 275,* relied on. MAHOMED SADAT ALI MILKI *v.* HARA SUNDARI DEBYA (1912) . . . **16 C. W. N. 1070**

HINDU LAW—WILL.

1. ——— Gift to future wife of son of testator, she being in existence at the time of the testator's death—*Succession Act (X of 1865), s 99, effect of—Hindu Wills Act (XXI of 1870), s. 3, how far controls principles of Hindu law* Section 99 of the Indian Succession Act does not apply to the will of a Hindu and invalidate provisions made in accordance with the principles of the Hindu Law. A bequest made by a father to the would-be wife of his son may be deemed a bequest to a person described as standing in a particular degree of kindred to his son within the meaning of the exception to s 99 of the said Act Although by s 3 of the Hindu Wills Act, the provisions of s 99 of the Indian Succession Act were made applicable to the Hindus, the intention of the Legislature was to leave unaffected the rules of Hindu Law. According to the principles of Hindu Law, a bequest made by a peison to his son's would-be wife, who was in existence at the time of the testator's death, is valid, notwithstanding the provisions of s. 99 of the Indian Succession Act. DINESH CHANDRA ROY CHOWDHURY *v.* BIRAJ KAMINI DASSEE (1911) **I. L. R. 39 Calc. 87**

2. ——— Construction of will—*Bequest to testator's daughter-in-law after death of wife—Whether it conferred an absolute or only a life estate in the property* The will of a Hindu testator after reciting that he had no male heir, and had already provided for his widowed daughter, stated:—"I have resolved that after my death my wife legatee No 1, shall remain in possession and enjoyment of all my property with all powers or authority like myself, and that after the death of my wife my daughter-in-law, widow of Raghuraj Singh, legatee No 2, shall remain in possession and enjoyment of all the properties aforesaid like myself and legatee No 1 . . .

. . I therefore execute a will in favour of my daughter-in-law, so that on the demise of myself and my wife the estate and name of my ancestors may continue as before, and she in place of Raghuraj Singh shall perform my funeral ceremonies and those of my wife according to the *shashtras* and the custom of the family, and then she shall have power to nominate any one whom she may think fit as 'heir' so that the name of the family may continue as formerly and now with honour" *Held* (affirming the decision of the Court of the Judicial Commissioner), that, on the true construction of the will, the word "heir" meant heir to the testator. and the daughter-in-law took (as did the wife) not an absolute interest, but only a life estate in the testator's property, which was therefore on her death not liable to attachment

HINDU LAW—WILL—*concld.*

and sale under decrees against her representative. BRIJ LAL *v.* SURAJ BIKRAM SINGH (1912) I. L. R 34 All. 405

HINDU WIDOW.

See HINDU LAW—GIFT I. L. R. 34 All. 129

See HINDU LAW—WIDOW I. L. R. 34 All. 189, 207, 385

HINDU WILLS ACT (XXI OF 1870).

——— s. 3—

See HINDU LAW—WILL I. L. R 39 Calc. 87

HINDUS IN BIHAR.

See MAHOMEDAN LAW—PRE-EMPTION I. L. R. 39 Calc. 915

HUSBAND AND WIFE.

See HINDU LAW—INHERITANCE I. L R 36 Bom. 138

I

IDDUT.

———reconversion during the period of

See MAHOMEDAN LAW—BIGAMY. I. L. R. 39 Calc. 409

IDOL.

———*Property dedicated to an idol-Decree against manager-Execution sale—Purchase by defendant—Suit by succeeding manager to recover possession—Defendant's possession adverse to the idol.* The plaintiff, a manager of a temple, brought a suit in the year 1908 to recover possession of certain endowed property in the possession of the defendant. The defence was that the property was purchased at a Court sale in 1870 in execution of a decree against the then manager and that the defendant's possession was adverse to the idol. *Held,* dismissing the suit, that the defendant's possession was adverse to the idol. *Dattagiri* v. *Dattatraya, I. L. R. 27 Bom. 363,* referred to. PANDURANG BALAJI *v.* DNYANU (1911) I. L. R. 36 Bom. 135

IMMORAL OR ILLEGAL DEBT.

See HINDU LAW—DEBT I. L R. 39 Calc. 862

IMMOVEABLE PROPERTY.

———restoration of—

See CRIMINAL PROCEDURE CODE, 1898, s. 522 . I. L. R. 39 Calc. 1050

———suit for

See MESNE PROFITS I. L R. 39 Calc. 220

IMPARTIBILITY.

See CIVIL PROCEDURE CODE, 1882, ss. 13, 462 . I. L. R. 36 Bom. 53

IMPARTIBLE ESTATE.

See HINDU LAW—INHERITANCE. I. L. R. 34 All. 65, 79

See KUNJPURA, STATE OF I. L. R. 39 Calc. 711

IMPORT.

See EXCISEABLE ARTICLES. I. L. R. 39 Calc. 1053

IMPROVEMENT ACT, BOMBAY (BOM. IV OF 1898).

See BOMBAY IMPROVEMENT ACT.

INAM.

See SANAD . I. L. R. 36 Bom 639

INCESTUOUS ADULTERY.

———condonation of—

See DIVORCE . I. L. R. 39 Calc. 395

INCUMBRANCE.

See LANDLORD AND TENANT. I. L. R. 39 Calc. 138

INDEPENDENT ADVICE.

See PURDANASHIN DONOR. I. L. R. 39 Calc. 933

INDIAN EXPLOSIVES ACT (IV OF 1884)

——— rule 3 (1) (*b*):

See MAGISTRATE I. L. R. 39 Calc 119

INDIAN INSOLVENCY ACT (1848), 11 & 12 VICT., C. XXI.

———s. 24

See TRUSTEE . I. L. R. 35 Mad. 712

INHERENT POWER.

See CIVIL PROCEDURE CODE (1908), O. IX, rr. 8 AND 9 ; s 151. I. L. R. 34 All. 426

See DECREE, AMENDMENT OF. I. L. R. 39 Calc. 265

INHERITANCE.

See CUSTOM I. L. R. 39 Calc. 418

See HINDU LAW—INHERITANCE. I. L. R. 36 Bom. 138, 546

INJUNCTION.

See CIVIL PROCEDURE CODE, 1908, s. 11. I. L. R. 36 Bom. 283

See CONSEQUENTIAL RELIEF, PRAYER FOR. I. L. R. 39 Calc. 704

INJUNCTION—*concld.*

See LIMITATION ACT (XV OF 1877), SCH. II, ART. 178 **I. L. R 34 All. 436**

INJURY TO HEALTH.

See DIVORCE . **I. L. R. 39 Calc. 395**

INSOLVENCY.

See FORFEITURE. **I. L. R. 39 Calc. 1048**

See INDIAN INSOLVENCY ACT (11 & 12 VICT C. XXI)

See PRESIDENCY TOWNS INSOLVENCY ACT, 1909, SS 9 (*e*), 10. **16 C. W. N. 733**

See PROVINCIAL INSOLVENCY ACT (III OF 1907), S. 15. **16 C. W. N. 853**

See PROVINCIAL INSOLVENCY ACT (III OF 1907), SS. 24 AND 26 **I. L. R. 34 All. 442**

INSTRUMENTS OF GAMING.

See COTTON-GAMBLING **I. L. R. 39 Calc. 968**

INSURABLE INTEREST.

See INSURANCE **I. L. R. 36 Bom. 484**

INSURANCE.

See LIFE INSURANCE.

1. ——— **Marine insurance**—*Insurable interest of agent in goods of principal—Effect of a Mahajan's "Majur"—Local custom when enforced—Duties and rights of insurer and policy-holder in case of total loss.* The plaintiffs, as commission agents, shipped certain goods on behalf of constituents on board the ship "*Ali Madut*" in the year 1899 The plaintiffs were instructed by their principals to insure these goods, and accordingly by a policy dated February 7th, 1899, the plaintiffs insured the goods, with the defendants, subject, as stated in the policy, to the custom of the port of Cutch Mandvi. The ship "*Ali Madut*" was wrecked off the coast of German East Africa and the wreck and the remains of the cargo were sold by the local authorities and the proceeds handed over to the owner of the vessel The plaintiffs sued the defendants to recover Rs3,500 as the value of the goods. The defendants, besides certain other objections to the plaint, objected that the plaintiffs as agents had no insurable interest in the goods ; that by the custom of the port of Cutch Mandvi the claim of the plaintiffs could not be established without the production of a Mahajan's "*Majur*," and that the defendants were in any event entitled to credit for the sale proceeds of the wreck and cargo *Held*, that an agent who has authority from his principles, express, implied or ratified, can effect insurances on the goods of his principals, that the custom of the port of Cutch Mandvi must be construed in a reasonable manner and that under it a Mahajan's "*Majur*" could not be required in the case of total loss ; that the policy-holder's duty was only to give intimation of total loss, at

INSURANCE—*concld.*

the earliest possible opportunity, to the insurer, and that it was for the insurer to protect his interest and to recover whatever was left as the net balance of the sale proceeds of the cargo. *Ransordas Bhogilal* v. *Kesrising Mohanlal, 1 Bom. H. C. 229*, referred to. KANJI DWARKADAS *v.* HARIDAS PURSHOTTAM (1911) **I. L. R 36 Bom. 484**

2 ——— *Policy of Marine insurance—Perils of the sea—Wear and tear not included within the words.* Where a boat was insured against perils of the sea, and it was proved that it sank in fair weather and smooth water without any assignable cause and where it was not proved that the bottom plates had sprung a leak in consequence of the alleged bumping of the boat, and where also there was some evidence of the boat having been deliberately scuttled, which if not accepted would lead to the inference that the bottom plates had corroded in consequence of age and ordinary wear and tear: *Held*, that the case was not covered by the terms of the policy. The term "perils of the sea" refers only to fortuitous accidents or casualties of the sea. The words do not cover every loss of which the sea is the immediate cause and so wear and tear do not come within the meaning of those words There must be some casualty, something which could not be foreseen as one of the necessary accidents of adventure. The "*Xantho*," *L R 12 A. C 503, 509*, followed. *Anderson* v *Morice, 10 Com Pleas 58, Blackburn* v *The Liverpool and Brazil River Plate Steam Navigation Co*, [*1902*] *1 K B. 290*, distinguished W. STEWART *v* THE NEW ZEALAND INSURANCE CO., LD. (1912) **16 C. W. N. 991**

INTENTION OF PARTIES.

See MORTGAGE **I. L. R. 39 Calc. 527**

INTEREST.

See CONTRACT ACT, S 74 **I. L. R. 36 Bom. 164**

INTERLOCUTORY INJUNCTION.

———**breach of**

See EASEMENT **I. L R. 39 Calc. 59**

INTERLOCUTORY ORDER

See CIVIL PROCEDURE CODE, 1908, S. 47. **I. L. R. 34 All. 530**

See CIVIL PROCEDURE CODE, 1908, S 115 **I. L. R. 34 All. 592**

IRREGULARITY.

See SALE IN EXECUTION OF DECREE **I. L. R. 39 Calc 26**

JAGHIR.

See SANAD **I. L. R. 36 Bom. 639**

See SETTLEMENT, CONSTRUCTION OF **I. L. R. 39 Calc. 1**

JAIL CODE.

——————rules in—

——————The rules contained in what is known as the Jail Code are rules framed by the Local Government under the powers contained in the Prisons Act and subsequently sanctioned by the Governor-General in Council. Rules when so framed and approved have the same force as the Statute and it is not open to any person to set aside the provisions of such Rules. PEARY MOHAN DAS *v.* D. WESTON (1911) . **16 C. W. N. 145**

JALKAR.

——————dispute concerning

——————*Dispute concerning jalkar—Jurisdiction of Magistrate to institute proceedings under s. 145 of the Code after an order binding down one of the parties to keep the peace—Order attaching the subject of dispute on being unable to determine the question of possession— Criminal Procedure Code (Act V of 1898), ss 107, 145, 146* The Magistrate has jurisdiction to take proceedings under s. 145 of the Criminal Procedure Code, after an order under s 107 of the Code binding down one of the parties to keep the peace, when the circumstances so require. Where there was a reasonable apprehension that several persons, who were interested in the subject of dispute and had absconded at the time of the s. 107 proceeding, might cause a breach of the peace with the first party, who were fishermen, or that the latter might seek to enforce their rights against the second party, who had been bound down, in which case the order binding them down would have the effect of ousting them from any possession they might have :—*Held*, that the Magistrate acted properly in instituting proceedings under s. 145 of the Code, in order to determine which party was in actual possession of the disputed properties, and was justified in attaching the same, under s. 146, if he found himself unable to determine the question of possession. BAISNAB CHARAN MAJHI *v.* GATINATH MUNSHI (1912) . **I. L. R. 39 Calc. 469**

JOINT HINDU FAMILY.

See EVIDENCE ACT (I OF 1872), S. 69
I. L. R. 34 All. 615

See HINDU LAW—JOINT FAMILY.

See MORTGAGE **I. L. R. 34 All. 289**

JOINT OWNERS.

——————*Partition—Abadi not formally divided but separate portions thereof taken possession of by the various owners—Agreement amongst owners—Rights of owners as to portions in possession of each* A village was divided into three mahals, with the exception of the *abadi*, as to which it was found that it had not been divided between the mahals by demarcation on the village map, or on the spot, but the owners of the mahals had been in separate possession of portions of it. *Held*, that the only possible inference from this finding was that the parties had agreed among themselves as to their possession of the *abadi*, and that, so long as the agreement continued, each party was entitled to use the portion in his possession in any way he pleased so long as such user or possession did not interfere with the user or possession of the owners of the other mahals. *Kumudini Masumdar* v. *Rasik Lal Mazumdar*, *11 C. W. N. 517*. followed. JAGANNATH PRASAD *v.* BADRI PRASAD (1911) **I. L. R. 34 All. 113**

JOINT POSSESSION.

See CIVIL PROCEDURE CODE, 1908, O. XXI, R. 35 . **I. L. R. 34 All. 150**

JOINT STOCK COMPANY.

——————*Joint Stock Co. if may be restrained from dismissing its Managing Agents—Shareholders of Co., if may be restrained from considering proposal of removal of Managing Agents —Injunction—Contract of service—Specific Relief Act (I of 1877), ss 21 and 57* Under ss 21 and 57 of the Specific Relief Act a Limited Liability Company cannot be restrained by injunction from dispensing with the services of Managing Agents even when the contract of service provides that the Managing Agents are only to be removed in a specified manner and after a specified period. Nor can the shareholders be restrained by injunction from considering the question of such removal at an Extraordinary General Meeting The remedy of the Managing Agents for dismissal, if wrongful, lies in a suit for damages. *Isle of Wight Railway Co.* v. *Tahourdin*, *25 Ch. D. 320*, relied upon N C SIRCAR AND SONS, *v.* THE BARABONI COAL CONCERN, LD. (1911)
16 C W. N. 289

JUDGMENT.

——————necessity of writing

See CIVIL PROCEDURE CODE, 1908, O. XLI, R. 11 **I. L. R. 36 Bom. 116**

JUDICIAL ACT.

See SEARCH FOR ARMS
I. L. R. 39 Calc. 953

JURISDICTION.

See BENGAL, N. W P. CIVIL COURTS ACT (XII OF 1887), SS. 8, 20.
I. L. R. 34 All. 383

See BENGAL, N. W. P AND ASSAM CIVIL COURTS ACT (XII OF 1887), SS 8 AND 21 . . **I. L. R. 34 All 205**

See BOMBAY IMPROVEMENT ACT, 1898.
I. L. R. 36 Bom. 203

See CIVIL PROCEDURE CODE, 1882, SS. 278, 279, 280, 281.
I. R. L. 34 All. 365

See CIVIL PROCEDURE CODE, 1882, S. 539
I. L. R. 36 Bom. 29

JURISDICTION—*concld*

See CIVIL PROCEDURE CODE, 1908, S. 20 (*c*) . **I. L. R. 34 All. 49**

See CIVIL PROCEDURE CODE, 1908, S 115 **I L. R. 36 Bom. 105**

See COURT FEES ACT, 1870, S 17. **I. L. R. 36 Bom. 628**

See CRIMINAL PROCEDURE CODE, S. 177. **I. L. R. 34 All. 451**

See CRIMINAL PROCEDURE CODE, S 179, **I. L. R. 34 All. 487**

See CRIMINAL PROCEDURE CODE, S 195 (7) (*a*), (*b*) AND (*c*). **I. L. R. 34 All. 197**

See CRIMINAL PROCEDURE CODE, SS. 195, 476 . **I. L. R. 34 All. 602**

See CRIMINAL PROCEDURE CODE, S. 407 **I. L. R. 34 All. 244**

See CRIMINAL PROCEDURE CODE, 1898, S. 522 . **I. L. R 39 Calc. 1050**

See EVIDENCE ACT (I OF 1872), S. 44 **I. L. R. 34 All. 143**

See HEREDITARY OFFICES ACT, BOMBAY, S. 67 . **I. L. R 36 Bom. 420**

See HIGH COURT, JURISDICTION OF.

See JURISDICTION OF CIVIL COURT.

See JURISDICTION OF CRIMINAL COURT.

See JURISDICTION OF HIGH COURT.

See LAND ACQUISITION **I. L. R 39 Calc. 33**

See LIMITATION ACT (IX OF 1908) SCH. I, ART. 152 **I. L. R 34 All. 482**

See MAGISTRATE **I. L. R. 39 Calc. 119**

See PROHIBITORY ORDER **I. L. R. 39 Calc. 104**

See PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887), S. 25 **I. L. R 34 All. 348**

See PUBLIC GAMBLING ACT (III OF 1867), S. 5 . **I. L. R. 34 All. 597**

See SANCTION FOR PROSECUTION. **I. L. R. 39 Calc. 774**

See SUCCESSION CERTIFICATE ACT (VII OF 1889), SS. 19, 26. **I. L. R. 34 All. 148**

JURISDICTION OF CIVIL COURT.

See HINDU LAW—CASTE QUESTION. **I. L. R. 36 Bom. 94**

———*Civil and Revenue Courts—Act (Local) No. II of 1901 (Agra Tenancy Act), ss. 4, 95, 167, 197—Act (Local) No. III of 1901 (United Provinces Land Revenue Act), ss. 56, 233 (i)—Suit for declaration regarding various alleged customary rights of zamindars, mostly of the nature of cesses.* A suit was filed by certain tenants of a village against the zamindars praying for a declaration that no custom existed in their village which entitled the zamindars to take certain fruits and wood, or to the use of a plough, or to a number of other dues, including sugarcane juice from some of the tenants, poppy seed from the Koeries, and various other matters of the same description *Held*, that the suit was properly filed in a Civil Court, and was not excluded from the jurisdiction of such Court by anything contained in either the Agra Tenancy Act, 1901, or the United Provinces Land Revenue Act, 1901. SHEOAMBAR AHIR *v.* THE COLLECTOR OF AZAMGARH (1912) . **I. L. R. 34 All. 358**

JURISDICTION OF CRIMINAL COURT.

See JURISDICTION OF MAGISTRATE

1. ———— **Magistrate**—*Jurisdiction—Cognizance of an offence under the Penal Code—Incompetence to take cognizance, on the same facts, of an offence under a Special Act, for want of consent of Government—Subsequent complaint to a superior Magistrate of an offence under the Special Act, with the necessary consent obtained from Government—Jurisdiction of latter to take cognizance without withdrawal of the case to his own file—Search for explosives in the presence of police officers of superior rank—Legality of search—Opinion of Assessors, how to be recorded—Preparation to commit dacoity—Admissibility of documents found in possession of the accused—Criminal Procedure Code (Act V of 1898), ss 190, 309, 529 (e), 530 (k), and 531—Penal Code (Act XLV of 1860), s 399—Explosive Substances Act (VI of 1908), ss. 4 (b) and 7—Indian Explosives Act (IV of 1884), Rule 32 (1) (b) of Government Rules* Where a complaint was filed by a Sub-Inspector of Police before the Subdivisional Magistrate, of an offence under s. 399 of the Penal Code, and the facts disclosed also an offence under s 4 (*b*) of the Explosive Substances Act (VI of 1908), of which the Magistrate could not then take cognizance for want of the consent of Government under s 7 of the Act, and a complaint was subsequently filed by the Superintendent of Police, with such a consent obtained, before the additional District Magistrate: *Held*, that the latter had jurisdiction to take cognizance of the offence, and that the initiation and continuation of the proceedings by him were legal, notwithstanding that he had not withdrawn the original case to his own file. *Jhumuck Jah* v. *Pathuk Mandal, I. L. R. 27 Calc. 798, Golapdy Sheik* v. *Queen-Empress, I. L. R. 27 Calc. 979,* [followed in *Radhabullav Ray* v. *Benode Behari Chatterjee, I. L. R. 30 Calc. 449*] *Emperor* v. *Sourindra Mohan Chuckerbutty, I. L. R. 37 Calc 412, Moul Singh* v. *Mahabir Singh, 4 C. W. N. 242, Charu Chandra Das* v. *Narendra Krishna Chakravarti, 4 C. W. N. 367, Bishen Doyal Rai* v. *Chedi Khan, 4 C. W. N. 560,* and *Jharu Jola* v. *Shukh Deo Singh, 3 C. L. J. 87,* distinguished. *Held*, also, that in any case, having regard to ss. 529 (*e*), 530 (*k*), and 531 of the Criminal Procedure Code, unless it appeared that the proceedings wrongly held had, in fact, occa-

JURISDICTION OF CRIMINAL COURT —*contd.*

sioned a failure of justice they could not be set aside *Sonatun Dass* v. *Gooroo Churn Dewan, 21 W R Cr 88*, referred to. A search for explosives by police officers of rank, not below that of an Inspector, is legal under rule 32 (*1*) (*v*) of the Government Rules framed under the Indian Explosives Act (IV of 1884) S. 309 (*1*) of the Criminal Procedure Code requires the opinions of the Assessors to be stated orally, and not in writing or in the form of a judgment under s. 367 Under s. 399 of the Penal Code, having in possession or immediate control any explosive substance is one of several means to the end, whereas, under s. 4 (*b*) of the Explosive Substances Act, it is the offence itself, provided the necessary intent is proved. In order to render documents found in the possession of a party admissible against him as proof of their contents, it is necessary to show that he has in some way identified himself or, in other words, has, by any act, speech or writing manifested an acquaintance with, and knowledge of, the contents of all or any of them The rule would apply more strongly where some of the papers and letters were received, and others written, by the party against whom they are sought to be used. *Wright* v. *Tatham, 5 Cl. & Fin 670*, and *Barindra Kumar Ghose* v. *Emperor, I L. R. 37 Calc. 467*, followed. LALIT CHANDRA CHANDA CHOWDHURY *v.* EMPEROR (1911)

I. L. R. 39 Calc. 119

2. ——— Transfer of territory to native state—*Jurisdiction—Offence committed in British India—Accused committed to Sessions—Accused discharged for want of jurisdiction—Revision.* Certain persons were charged with committing an offence at a place in British India and were committed to the Sessions Court of Mirzapur, the case being subsequently transferred to the Sessions Court of Benares Before trial, however, the place where the offence had been committed became part of the newly constituted state of Benares *Held*, that the Sessions Court, whether of Mirzapur or Benares, was not deprived of jurisdiction to dispose of the case which had been committed to it for trial, inasmuch as at the time of the transfer to the state of Benares of the place where the alleged offence had been committed the accused were in British India in custody in point of law, if not in fact, of a Court of competent jurisdiction. *Emperor* v. *Mahabir, I L. R 33 All. 578*, followed *Damodahr Gordhan* v *Deoram Kanji, I L R 1 Bom 367*, distinguished. EMPEROR *v.* RAM NARESH SINGH (1911)

I. L. R. 34 All. 118

3. ——— Conspiracy at Cambay, foreign territory—*Jurisdiction—Forgery—Abetment of forgery—Abetment by conspiracy—Consequent forgery committed in British India—Trial in British India of the foreigner who conspired to forge at Cambay and who was in Cambay when the forgery was committed in British India—Indian Penal Code (Act XLV of 1860), ss 34, 109, 467.* The accused was a subject of the Cambay State

JURISDICTION OF CRIMINAL COURT —*concld.*

He lived there and traded with his business partner *A*. He conspired with *A* at Cambay and sent *A* to a professional forger at Umreth (a place in British India) with instructions to instigate the latter to forge a valuable security To facilitate the forgery, the accused sent his *khata* book with *A*. In pursuance of *A's* instigation the forgery was committed at Umreth. On these facts, the accused was charged, in a Court in British India, with the offence of abetment of forgery under ss. 467 and 109 of the Indian Penal Code The trying Judge referred to the High Court the question whether the accused, not being a British subject, was amenable to the Jurisdiction of his Court —*Held*, that the Court in British India had jurisdiction to try the accused, for the accused's offence was not wholly completed within Cambay limits, but having been initiated there, was continued and completed within the British territory of Umreth Where a foreigner starts the train of his crime in foreign territory, and perfects and completes his offence within British limits, he is triable by the British Court when found within its jurisdiction S 34 of the Indian Penal Code provides not only for liability to punishment but also for subjection of a conspirator to the jurisdiction of a Court though he conspires at a place beyond the jurisdiction EMPEROR *v.* CHHOTALAL BABAR (1912)

I. L. R. 36 Bom. 524

JURISDICTION OF HIGH COURT.

See HABEAS CORPUS

I. L. R. 39 Calc. 164

See HIGH COURT, JURISDICTION OF.

JURISDICTION OF MAGISTRATE.

See DISPUTE CONCERNING EASEMENT.

I. L. R 39 Calc. 560

See JURISDICTION OF CRIMINAL COURT.

See DISPUTE CONCERNING LAND.

I. L. R. 39 Calc. 150

See JALKAR . **I. L. R. 39 Calc. 469**

See SECURITY FOR GOOD BEHAVIOUR.

I. L. R. 39 Calc. 456

———*Charge with a view to commitment, cancellation of—Criminal Procedure Code (Act V of 1898), s 213 (2)—Cross-examination of prosecution witnesses after framing of the charge, effect of—"Witnesses for the defence," interpretation of—Practice.* It is open to a Magistrate, having drawn up a charge against an accused person with a view to his commitment to the Court of Session, to allow the accused to cross-examine the witness for the prosecution and, as the result, to cancel the charge. The words "witnesses for the defence" in s 213 (2) are wide enough to cover evidence elicited in cross-examination of witnesses for the prosecution *Surjya Narain Singh, In re, 5 C W. N. 110*, referred to. JOGENDRA NATH MOOKHERJEE *v.* MATI LAL CHUCKERBUTTY (1912)

I. L. R. 39 Calc. 885

JURY, TRIAL BY.

1. ——————— Misdirection—*Citation of ruling in the charge to the jury—Right of private defence when trespassers have begun cutting crop* When trespassers began cutting and carrying away crop grown by the person in possession, reasonable apprehension to the property having already commenced, the right of private defence of the latter commenced at the same time; and it was misdirection on the part of the Judge to leave it to the jury to say whether the fact that the police station was only 9 miles off from the place of occurrence did not take away that right The reference in such circumstances to his civil remedies also amounted to misdirection. No rulings or authorities should be cited by the Judge in his charge to the jury nor should they be asked to differentiate or form any opinion whatever on any authorities. Such procedure confuses the minds of the jury and constitutes misdirection. MEHER SARDAR *v.* THE KING-EMPEROR (1911)
16 C W. N. 46

2. ——————— *Misdirection—Grievous hurt—Abetment by conspiracy—Seisin by Jury—Re-trial—Jurisdiction* Where there was evidence that certain persons conspired to eject the complaint from his land, or, in other words, to commit criminal trespass, and the Judge said that if the jury found that those persons conspired with the first accused to commit criminal trespass then they would, if absent, be guilty of abetment, and being present they were guilty of the substantive offence: *Held*, that the omission to notice that the substantive offence, for which the accused were being tried, was not one of criminal trespass but of voluntarily causing grievous hurt constituted misdirection. JAMIRUDDI BISWAS *v.* KING-EMPEROR (1912). **16 C. W N 909**

3. ——————— Seisin by Jury—*Re-trial—Jurisdiction* The jury have to give their verdict on the facts as against each man severally and they are not, like the Judge, in charge of the entire case as a whole. When an accused is to be retired he must be placed before the jury upon all the charges which were framed against him and the High Court has no jurisdiction to uphold the conviction under one section and to order him to be re-tried under another. JAMIRUDDI BISWAS *v.* KING-EMPEROR (1912)
16 C W. N. 909

K

KABULIYAT.

——————— *Lease—Landlord and Tenant—Kabuliyat without pottah if constitutes a lease—Transfer of Property Act (IV of 1882), ss. 4, 105 and 107—Amending Act (III of 1885), s 3—Registration Acts (III of 1887), s. 3, and (XVI of 1908), s 2 (7)* A registered *kabuliyat* signed by the lessee and accepted by the lessor is sufficient to constitute a lease within the meaning of s 107 of the Transfer of Property Act. *Akram Ali v. Durga Prasanna Roy Chowdhuri, 14 C L J. 614*, referred to *Nand Lal v Hanuman Das, I. L R 26 All 368, Kashi Gir v. Jogendro Nath Ghose, I L R 27 All. 136, Sheo Karan Singh v Maharaja Paribhu Narain Singh, I. L. R 31 All. 276, Turof Sahib v. Esuf Sahib, I. L. R 30 Mad. 322; Kaki Subbanadri v Muthu Rangayya, I. L. R 32 Mad 532*, discussed. *Sayed Ajam Sahib v. Madura Sree Menatchi Sundareswarar Devastanam, 21 Mad. L. J 202*, approved. *Nilmamud Sarkar v Boul Das, 14 C W N 73*, distinguished RAIMONI DASSI *v* MATHURA MOHAN DEY (1912)
I. L. R. 39 Calc. 1016

KHANGA ATTACHED TO DARGA.

See MAHOMEDAN LAW—ENDOWMENT.
I. L R. 36 Bom. 308

KHOJA MAHOMEDANS.

——————— *Settlement—Settlor himself trustee—No delivery of possession—Son born after settlement—Power of settlor to revoke settlement—Settlor's intention not carried out owing to settlor's death—Power of Court to aid defective execution—Suit by after-born son to set aside settlement—Limitation Act (IX of 1908), s 10—Resulting trust back to settlor—Adverse possession—Difference between estoppel and res judicata—Validity of wakf contained in deed containing other gifts—Local usage cannot override Mahomedan Law—Registration—Vis Major* By an indenture of settlement dated 7th January, 1886, *J. P*, a Khoja Mahomedan, purported to convey certain immoveable properties to trustees for the benefit of his family The trusts were in effect for *J P* for life and after his death, subject to certain rights of residence and maintenance, to pay the net income of the trust properties to *N M.* for his life and in the event (which subsequently occurred) of the death of *N. M* without leaving male issue, to divide the trust funds into ten equal parts to be held in favour of certain donees, four-tenths being given to charity. The indenture also reserved to the settlor power to revoke or vary any of the trusts contained therein There was no surrender of the property in fact to any one except *J P* himself in his character as trustee for himself The donor, however, opened an account in his books of this property as trust property On the 26th October 1886, a second son, the plaintiff, was born to *J P*, whereupon *J P.* being desirous of providing for the second son, desired to vary the terms of the deed of the 7th of January 1886, and to re-settle the same so that his two sons should share equally A draft deed of declaration of new trusts was accordingly prepared by *J. P's* attorneys and on the 24th of July 1887 was finally settled and approved by *J P* An engrossment was thereupon made and duly stamped, but on taking the engrossment to *J P* for his execution on July 29th it was found that owing to an error of the engrossing clerk several pages of it were missing Another engrossment was prepared forthwith, but on the some

KHOJA MAHOMEDANS—*contd*

day before the new engrossment was ready *J P* died The plaintiff thereupon brought a suit to have it declared whether or not the deed of 1886 was a valid deed and prayed that the defective execution of the second deed might be aided by the Court and the provisions of the said second deed declared to be valid *Held*, (i) That the plaintiff was not time-barred as against the trustees from bringing the action (ii) That, however, restricted the gift was in form to *J P* it was in effect a gift absolute to him for life, and that entirely irrespective of the power of revocation. (iii) That all the gifts in the trust settlement made contingent upon *N. M* dying without issue were bad (iv) That that portion of the instrument which purported to create a *wakf* in respect of four-tenths of the settled property was bad and void (v) That the gift was bad for want of contemporaneous delivery of possession. (vi) That this was a case, if ever there was a case, in which the Courts might act upon those principles which have always guided the Courts of Equity in England and aid defective execution of a power, defective not through any fault on the part of the person intending to execute it but by reason of an act of God, and that the unsigned deed ought to be effectuated by the Court to the extent of making it binding on the conscience of the trustees *Per Curiam* It is only in the events of the trusts of some of them being bad that the question of limitation can arise For if a trust deed in its entirety is good, then of course effect must be given to it irrespective of any question of lapse of time. Where what purports to be a trust-deed turns out to have been entirely void and therefore not to have passed the legal estate, the position of those who took possession believing themselves to be trustees but not in law real trustees, necessarily assumes the character of possession by trespass and is therefore from its inception in law adverse against all the world Where, however, the trust-deed in itself is good and valid to the extent of passing the legal estate but the trusts declared are in themselves wholly or partially bad, then there is a resultant trust to the author of the trust and the possession of the trustees, whatever they might think of it and however they might intend to use it for the purpose of carrying out the bad trusts, could not in law be adverse to the *cestui-que-trust*, that is to say, the grantor Widely different is the case of trustees who obtain the legal estate from the author of the trusts to apply the beneficial uses to specified objects which may or may not be good For then from the beginning there is always a relation between the author of the trusts and the trustees in whom confidence has been reposed, and there is always the legal possibility at least of another relation coming into existence between them where, owing to the failure of the declared trusts, there is a resultant trust back to the grantor who from that moment becomes in law the *cestui-que-trust* of the trustees Where it was the intention that there should be an ultimate trust in favour of

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the grantor it is usual to express that on the face of the deed. A deed so framed as upon its very face to provide for the springing back of the trust fund or a part of it in certain events to the author of the trust, does create what is at once an express and resultant trust. The current of authority seems to have set steadily against the extension of s 10 of the Limitation Act to all cases of resultant implied or constructive trusts Where the ultimate resultant trust which is to spring back to the settlor is consistent with the discharge of the declared trust, then it may, by loose use of language, be said to be express on the face of the deed, but when the extinction or failure of all the intended trusts is a condition precedent to the resultant trusts coming into being, then the latter is clearly a true resultant trust and is not express and never can be express on the face of the deed. The answer to the question—What is the true position when declared trusts failed and there is a resultant trust over to the settlor or his heirs —is to be found in the very elementary proposition that the possession of the trustee is always that of *cestui-que-trust*, and, therefore, however, he may think or wish to be holding as trustee for trusts which have failed in the eye of the law, he is really holding, when those trusts failed, as trustees for the settlor Then the position is simply this : so long as he retains and professes to retain the character of a good and legal trustee, he is holding the legal estate as stake-holder for two claimants, the intended beneficiaries of the declared trusts which have failed, and the resultant trustee, that is, the settlor And no length of possession by a trustee can be adverse to his *cestui-que-trust* as soon as that legal person is discovered and ascertained. So long as the trustee occupies the position of a trustee as soon as declared trusts failed and there is a resultant trust in favour of the settlor, the trustee's possession is essentially that of his *cestui-que-trust* and can only be changed into adverse possession by a conscious and deliberate act ; that is to say, that he must repudiate all intention of holding for the resultant *cestui-que-trust* and he must assert his intention of continuing to apply the trust fund to uses which the Court has declared or which are known to him to have failed Then his possession might become adverse to his legal *cestui-que-trust* and if that person did not take steps within twelve years he might not be able to avail himself, under the Indian authorities, of the provisions of s 10 of the Limitation Act Estoppel and *res judicata* are entirely distinct *Res judicata* precludes a man averring the same thing twice over in successive litigations, while estoppel prevents him saying one thing at one time and the opposite at another It is consistent with the Mahomedan Law that a Mahomedan may devote his property in *wakf* and yet reserve to himself and his descendants in a very indefinite manner the usufruct of property : *Jamabai* v. *R D Sethna, I L R 34 Bom 604*, considered The power of revocation is inherent in the donor of every gift, so that expressing it, as

is usually done by English draftsmen in these voluntary settlements is merely surplusage and so far from invalidating the gift as a whole would necessarily be implied in it were it not expressed Under the Mahomedan Law where a gift is conditioned by a power restricting alienation, the gift is absolute and the condition is void. A gift to the donor himself for his life and then over to others could not be reconciled with any recognised principle of the Mahomedan Law of gift and must necessarily, therefore, so far as the remoter donees are concerned, be bad *ab initio Jamabai v R D. Sethna, I L R. 34 Bom. 604,* followed A vested remainder in the strictest sense of the English words and *a fortiori* a contingent remainder could not possibly by any stretch of ingenuity be made the subject of a valid Mahomedan gift *inter vivos* consistently with the requirements of the Mahomedan Law on that head and for this very simple reason that no man can give possession *in præsenti* of that which may never come into possession at all It is of the essence of a Mahomedan gift *inter vivos* that the donor should divest himself of the actual possession of the thing given and transfer it to the donee and if the donee does not take physical possession of it at the time of making the gift, then till he does, the gift is revocable. There is no authority to be found anywhere in the Mahomedan Law books themselves for the proposition that a man giving *inter vivos* may give an estate first to himself and then to *A* for life and then to *B* absolutely It is undoubtedly a rule of the Mahomedan Law that where a donor makes a gift and accepts in exchange something, whether that something be independent of or part of the original gift, then the rest of the gift is irrevocable. No gift *in futuro* can be made by a Mahomedan *inter vivos*, in order to validate such a gift there must be an actual delivery of seisin to the donee, there must be a transfer of possession and that transfer of possession must be from the donor to the donee. While the Mahomedan Law insists that a gift to private persons should be free of all pious and religious purposes, this does not necessarily prohibit the making of the gift to *wakf* which may be contained in a deed which makes other gifts at the same time to private persons It appears to be the Mahomedan Law that a donor may give his property in *wakf*, that is to say, appropriate and dedicate the corpus to the service of God, while reserving for himself a life-interest in the usufruct. But as in the case of gifts to private individuals the Mahomedan Law never contemplated and will not allow a merely contingent gift in *wakf* This necessarily flows from the jural conception of a *wakf* which is the immediate appropriation and consecration of specified property to the service of God and the reservation of the donor's life-interest in that property does not in any way clash with that conception for the corpus is there and then definitely and finally appropriated to its intended purpose But it is plainly otherwise, while the

gift is conditioned upon the happening of some future uncertain events There can, in such circumstances, be no appropriation synchronizing with the declaration because should the future events happen it is neither the donor's intention then nor after the happening of that event that the property ever should be appropriated to the service of God It would be passing the limits of the application of the maxim "*Usus et conventio vincunt legem*" if it were sought to be shown that the Khojas are allowed by local usage to override the Mahomedan Law which prohibits any Moslem from disposing of more than one-third of his property by will CASSAMALLY JAIRAJBHAI *v* SIR CURRIMBHOY IBRAHIM (1911) . . **I. L. R. 36 Bom. 214**

KHOTI VILLAGE

See SURVEY AND SETTLEMENT ACT, SS 25, 28, 37, 38. **I. L. R. 36 Bom. 290**

KIDNAPPING.

See PENAL CODE (ACT XLV OF 1860), S. 366. **I. L. R. 34 All. 340**

KUNJPURA, STATE OF.

———*Succession to estates of Punjab Ruling Chiefs—Custom—Impartible estate—Primogeniture—Mahomedan law—Suit by junior members of Kunjpura family for shares in estate—Zemindari rights—Property appertaining to Chiefship up to 1849—Property subsequently acquired.* The question in this case was as to the rule of succession applicable to the Kunjpura State situate in the Cis-Sutlej districts of the Punjab The *riasat*, or *raj*, was founded by Najabat Khan, who in 1748 obtained a *sanad* from the Afghan Conqueror, Ahmed Shah Abdali, granting him an hereditary *jagir* of the villages of which he was then in possession, which were declared to be revenue-free, and held subject to the obligation of maintaining order in his possessions In 1849, however, the British Government withdrew from the Chief of Kunjpura the civil and criminal jurisdiction under which he had been until then exercising quasi-sovereign power: *Held*, that it had been established beyond doubt that the Kunjpura Estate had, ever since the time of Najabat Khan, descended to a single heir who had been recognised as the Chief of an impartible *riasat*, and that attempts by junior members of the family to obtain shares in it had invariably failed. The two instances relied on as showing the allotment of shares to junior members were, in their Lordships' opinion, opposed to that contention; and no other evidence had been referred to suggesting that there had ever been a division of the estate in accordance with Mahomedan Law The opinion of the Board of Administration in 1852 that the zamindari rights in the villages comprised in the *jagir* were the subject of "inheritance according to the Mahomedan law," and should be shared by

KUNJPURA, STATE OF—*concld,*

all the members of the family, became ineffective, and was never acted upon in the course of the constant claims put forward by the junior members of the family to a share in the estate; and later decisions on those claims laid down in explicit terms that the *zamindari* rights belonged to the *riasat* With regard to the property acquired after 1849, in which the Chief Court had decided that the plaintiffs (younger brothers of the defendant who had taken possession of all the property as the eldest son) were by the Mahomedan law entitle to shares: *Held* (reversing that decision), that there was nothing to show that the Government in withdrawing the civil and criminal powers which the Chiefs had exercised prior to 1849, intended to make any alteration in their status or to vary the rule which had governed the succession to the estate IBRAHIM ALI KHAN *v.* MUHAMMAD AHSANULLAH KHAN (1912)
I. L. R 39 Calc. 711

L

LAKHIRAJ TITLE.

See LIMITATION. **I. L. R. 39 Calc. 453**

LAMBARDAR AND CO-SHARERS.

See AGRA TENANCY ACT (II OF 1901), S. 194. **I. L. R. 34 All 98**

LAND.

See DISTRICT MUNICIPAL ACT (BOMBAY), S 160. **I. L. R. 36 Bom. 47**

LAND ACQUISITION.

I. L. R. 39 Calc 393

See APPEAL.

See FORFEITURE. **I. L. R. 36 Bom. 539**

See GRANT. **I. L. R. 36 Bom. 438**

See LAND ACQUISITION AC

———— *Debutter*—Shebait—*Land Acquisition Act (I of 1894), s 32, sub-s (1), cls. (i) and (ii)—Compensation—Whether shebait is entitled to withdraw compensation money for necessary repairs of debutter property—Jurisdiction—Practice* Land dedicated to an idol or to religious and charitable purposes is land belonging to the *shebait* or trustee "who has no power to alienate the same" within the meaning of the provisions of s 32 of the Land Acquisition Act Where a portion of the *debutter* property was acquired under the Land Acquisition Act, and the compensation money was invested in approved securities, the *shebait* is entitled to withdraw a portion of the invested funds and apply the same to effect necessary repairs to the remainder of the *debutter* property As under s 32 of the Act the compensation money is placed in the custody of the Court, jurisdiction is by implication conferred upon it to deal with all questions that may arise as to the application of the fund in its custody KAMINI DEBI *v.* PRAMATHA NATH MOOKERJEE (1911)
I. L. R. 39 Calc. 33

LAND ACQUISITION—*concld*

LAND ACQUISITION ACT (I OF 1894).

———— *Compulsory acquisition—Compensation—Collector's award—Government directing Collector to publish his award on a lower valuation* When the Collector, appointed under the Land Acquisition Act of 1894, once makes the enquiry prescribed by the Act and reaches his own conclusion as to the amount of compensation to be awarded to the claimant, it is not competent to the Government to set aside the conclusion and to direct the Collector to substitute a smaller amount than that which, as the result of his inquiry, he has determined to offer. DOSSABHAI BEJANJI *v* THE SPECIAL OFFICER, SALSETTE BUILDING SITES (1912)
I. L. R. 36 Bom. 599

———— **s. 32—**

See COURT-FEE. **I. L. R. 39 Calc 906**

———— **s. 32, sub-s. (1), cls. (1), (2).**

See LAND ACQUISITION.
I. L. R. 39 Calc. 33

———— **s. 49—**

———— *Question whether land under acquisition part of house—Reference to Court—Refusal by Collector—High Court, if may interfere in revision* Where a Land Acquisition Collector refused to make a reference to the Civil Court under s. 49 of the Land Acquisition Act, the High Court in revision set aside his proceedings subsequent to the refusal and directed the Collector to proceed according to law. *The Administrator-General of Bengal* v *The Land Acquisition Deputy Collector, 24-Pergannahs, 12 C W N 241*, followed. *British India Navigation Co* v *Secretary of State for India, 12 C L. I. 505 s c 15 C W. N. 87*, referred to. An application for a reference under the section may be made at any time before the award is actually made. KRISHNA DAS ROY *v* THE LAND ACQUISITION COLLECTOR OF PABNA (1911)
16 C. W. N. 327

———— **ss. 53, 54—**

———— *Land—Compulsory acquisition—Compensation—Award by Assistant Judge—Appeal to the District Judge—Second appeal—Practice and procedure—Civil Procedure Code (Act V of 1908), ss 96, 100* Where an award is made by the Assistant Judge under the provisions of the Land Acquisition Act, 1894, and there has been an appeal to the District Judge, no second appeal can lie from the appellate decision. NATHUBHAI NARANDAS *v.* MANORDAS LALDAS (1911)
I. L. R. 36 Bom. 360

LAND ACQUISITION ACT (I OF 1894) —*concld.*

——— s. 54—

See APPEAL **I. L. R. 39 Calc. 393**

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——— order of—

See COURT-FEE **I L. R. 39 Calc. 906.**

LANDLORD—

See TRANSFER OF PROPERTY ACT, S 107. **I. L. R. 36 Bom. 500**

LANDLORD AND TENANT.

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1. DIGWARI TENURE.

——— *Landlord and Tenant —Digwari Tenure in Manbhum—Grant of Coal Mines by Digwar—Grant of Mokurari lease—Minerals, right to, under the soil—Suit by zemindar claiming mineral rights—Parties to suit—Government—Digwar appointed and liable to dismissal by Government* Though the Digwari tenures in Manbhum are similar in some respects to the Ghatwali tenures in Birbhum, as having been originally granted in consideration of the performance of military service, to which police duties were attached, and as being hereditary and inalienable, the two kinds of tenure are not analogous: the Ghatwals had special rights under Regulation XXIX of 1814, and as to minerals, under Act V of 1859, and paid rent direct to Government, and not to the zamindar The Digwar of Tasra in Manbhum, appointed and liable to dismissal by Government, was the holder of two mouzahs at a fixed rent payable to the plaintiff-(appellant) in whose zamindari they were situate He granted a perpetual lease of the coal mines underlying the two mouzahs to a coal company who took possession and raised and sold a large quantity of coal In a suit for a declaration of the zamindar's right to the minerals under the soil and for an account and an injunction —*Held* (reversing the decision of the High Court), that there having been at the time of the permanent settlement, no separate settlement with the Digwar of Tasra (if the Digwari tenure then existed, which was doubtful) and the mineral rights not being vested in him at that time, the presumption was that the mineral rights remained in the zamindar, in the absence of proof that he had parted with them *Hari Narayan Singh Deo* v *Sriram Chakravarti, I L R 37 Calc 723, L R 37 I A 136*, followed *Held*, also, that it was not necessary to make the Government a party to the suit. They had never claimed the minerals under the mouzahs in suit, nor put forward any claim inconsistent with the rights asserted by the zamindar, and the rights of the Government would not be prejudiced or affected by the result of a suit to which they were not a party. DURGA PRASAD SINGH *v* BRAJA NATH BOSE (1912) **I. L. R. 39 Calc. 696**

LANDLORD AND TENANT—*contd.*

1. DIGWARI TENURE—*concld.*

2. DISPOSSESSION BY LANDLORD.

——— *Suit by tenant against landlord for recovery of land—Rules of limitation, general and special onus of proof as to—Limitation Act (IX of 1908), Sch I, Art 142—Bengal Tenancy Act (VIII of 1882), Sch. III, Art 3, ss 184, 550, 207—Character of tenancy, presumption as to—Area less than 100 bighas* In a suit by a tenant for the recovery of land of which he had been dispossessed by the landlord, the tenant claimed the land as tenure-holder and the defendants contended that it was an occupancy holding Neither the character of a tenure-holder nor that of an occupancy *ryot* was established by positive evidence The question being what period of limitation was applicable to the case: *Held*, that in the circumstances of the case there was no statutory presumption either way That the general rule of limitation in suits for recovery of possession of property was twelve years and that it is upon the party claiming the benefit of a shorter period of limitation to establish that the case fell within the special rule limiting the period to a shorter time The defendants having failed to establish the occupancy character of the holding so as to bring it within the special rule of limitation under the Bengal Tenancy Act and plaintiff's suit being within time by the general rule, the suit was not barred by limitation. A suit by a tenant to recover lands from the landlord, of which he alleges he has been dispossessed, is not a proceeding under the Bengal Tenancy Act within the meaning of cl. (7) of s. 20 of the Act There is no provision in cl (5) of s 5 of the Bengal Tenancy Act that when the area held by a tenant is less than 100 bighas, the tenant is to be presumed a *ryot* until the contrary is shown. TARA NATH CHAKRAVERTY *v* ISWAR CHANDRA DAS SARKAR (1911) **16 C. W. N. 398**

LANDLORD AND TENANT—*contd.*

3. EJECTMENT.

——— *Evidence Act (I of 1872), ss 11, 13, 32, cls (2) and (3)—Deeds not inter partes, admissibility—Description of boundaries in sales and mortgages of adjoining plots—Statements against pecuniary interest* In a suit to eject the defendants as trespassers, the latter set title as tenants in occupation of the land. *Held*, that recitals of boundaries in deeds of sales and mortgages executed by owners of adjoining plots of land and describing the disputed land as the tenanted land of the defendants or their predecessors were relevant under s 32 (*3*) of the Evidence Act, though not under s 32 (*2*) or 11, or 13 of that Act. *Sheonandan Singh* v. *Jeonandan Dusadh, 13 C. W N 71, Ningawa* v *Bharmappa, I L R 23 Bom 63, Haji Bibi* v *Aga Khan, 11 Bom L R 409, Abdul Aziz* v *Ebrahim, I L R. 31 Calc 985*, referred to ABDULLAH v KUNJ BEHARI LAL (1911) **16 C. W. N. 252**

4. ENCROACHMENT

1. ——— **Encroachment by tenant on adjoining land of landlord**—*Such encroachments enure for the benefit of the tenant during his tenancy and afterwards for the benefit of the landlord—Adverse possession* Possession by a person will be presumed to be held in his own right and adversely to the true owner This presumption will not apply when a special relationship exists between the parties, as tenants in common or members of an undivided family. The presumption in such cases will be that possession is held on behalf of all the co-owners or members of the family and it will lie on the possessor to prove that he held exclusive possession to the knowledge of those whose right he seeks to affect by such possession Where a tenant taking advantage of his position as such, takes possession of lands belonging to his landlord not included in his holding, the presumption is that such lands are added to the tenure and form part thereof for the benefit of the tenant so long as the holding continues and afterwards for the benefit of his landlord, unless it clearly appeared by some act done at the time that the tenant made the encroachment for his own benefit *Gooroo Doss Roy* v *Issur Chunder Bose, 22 W. R 246*, approved. It is not necessary that the tenant trespasser should prove that his trespass was known to his landlord to justify such presumption MUTHURAKKOO THEVAN *v* ORR (1912) **I. L. R. 35 Mad. 618**

2. ——— *Encroachment by tenant—Adverse possession of encroached land as tenant, if creates title—Landlord's right to recover possession when barred—Limitation Act (XV of 1877), Sch II, Art 144—Interest acquired by tenant* While a tenant is bound to treat that which is an encroachment on his landlord's land as held by him under his landlord the landlord is not bound to treat the land on which his tenant encroaches as held under a tenancy. But the

LANDLORD AND TENANT—*contd.*

4. ENCROACHMENT—*concld.*

landlord's right to recover possession of the land encroached upon may be lost by the tenant having adversely to the landlord asserted his title as tenant to the land for more than twelve years Under Art. 144 of the Limitation Act, there may be adverse possession not only of immoveable property but of any interest therein, and a tenant may claim to have been in adverse possession for 12 years of a limited interest in encroached land, *viz.*, a tenancy commensurate with that in the admitted lease between the parties GOPAL KRISHNA JANA *v* LAKHIRAM SARDAR (1912) **16 C. W. N. 634**

5 FORFEITURE.

——— *Landlord and Tenant—Ejectment—Recorded Tenant—Effect of denial of tenancy by him on his unrecorded co-sharer—Forfeiture* In a suit for ejectment based on the ground of forfeiture by reason of the denial of the landlord's title, it was found that the denial was by the recorded tenant and not by his unrecorded co-sharer in the tenancy: *Held*, that a person representing the tenancy in the books of the landlord, was entitled to bind his co-sharers for the purposes of the tenancy; but when he repudiated the tenancy, he must be taken to have acted beyond the scope of his authority; his disclaimer consequently, could not operate as a forfeiture of the tenancy BIRENDRA KISHORE MANIKYA *v* BHUBANESWARI (1912).

I. L. R. 39 Calc. 903

6 GROVE LAND.

——— *Rights of tenants with regard to groves—Custom—Wajib-ul-arz—Construction of document—"Malik"* The *Wajib-ul-arz* of a village contained the following provision as to grove land.—"Persons who have planted a grove and who are in possession of a grove have the rights of an owner (*ikhtiyar malikana*) If any trees fall down, they can plant fresh trees without the permission of the zamindar . . . When the land becomes denuded of all trees the planter of the grove will have the first right to cultivate the land" *Held*, that these provisions implied a right of transfer in the possessor of grove land. MUHAMMAD YASIN *v.* ILAHI BAKHSH (1912)

I. L. R. 34 All. 545

7. LEASE.

1. ——— **"Protected interests"**—*Incumbrance—Bengal Tenancy Act (VIII of 1885), s 160 (g)* The plaintiffs had under a sub-lease granted by *G*, who held under a permanent lease granted by *B*, *B* again holding under a permanent lease granted by *P* The lease given by *P* to *B* authorized *B* to grant sub-leases: *Held*, that the right and interest of *G*, and therefore of the plaintiffs, are "protected interests," and are not such as can be interfered with by a purchaser under

LANDLORD AND TENANT—*contd.*

7. LEASE—*concld*

the Bengal Tenancy Act AFAZUDDI KHAN *v.* PRASANNA GAIN (1911) **I L. R. 39 Calc. 138**

2. —— —— Lease—*Landlord and Tenant.* Where a comparatively small portion of the demised lands was found to have originally belonged to the lessee and to have been included in the lease by mutual mistake: *Held*, that the whole lease should not be set aside but that there should be an apportionment of rent for the remaining land RAIMONI DASSI *v.* MATHURA MOHON DEY (1912) **16 C. W. N. 606**

8. MINERAL RIGHTS.

——————— *Mineral rights—Permanent tenures, grant of, if conveys underground rights—Mogalı Brahmottar grants—Proof of permanency—Original tenure split up—Character of tenancy if altered* When certain tenures which were described as *Mogalı Brahmottar* were shown to have existed since before the permanent settlement and it appeared that the same rents had always been paid for them and that they were freely transferable *Held*, that the tenures were at least permanent tenures. That it was not correct to view such tenure-holders as owners of the land subject to a rent charge. The holder of a permanent tenure in the absence of all evidence of the terms of the lease should not be presumed to own the underground rights *Abhiram* v *Shyama Charan, I L R. 36 Calc. 1003; 14 C W N. 1; Shyam Chand* v. *Ram Kanai, 15 C. W. N. 417; Shama Charan* v *Abhiram, I L R. 33 Calc 511; 10 C W. N 738, Megh Lal* v *Raj Kumar, I. L R. 34 Calc. 358, 11 C W. N. 527; Brojanath Bose* v *Durga Prosad, I. L R 34 Calc 753; 12 C. W N. 193; Sriram* v. *Hari Narain, I L. R. 33 Calc. 54; 10 C W. N 425,* referred to. Where the original grant was that of a permanent tenure, the fact that subsequently the tenure was merely split up into more than one would not affect the permanent character of the tenancies. *Udoy Chandra Karji* v *Nripendra Narayan Bhup, I. L. R 36 Calc 287, 33 C. W. N. 410,* distinguished. JYOTI PROSHAD SINGH DEV *v.* GEORGE MATHEW DARBY (1911) **16 C. W. N. 241**

9. RENT.

1. ——————— Transfer of tenure—*Bengal Tenancy Act (VIII of 1885), ss 12, 13, 167—Suit for rent—Unregistered transferee of permanent tenure who has paid landlord's fee, if necessary party—Sale in execution of rent-decree obtained against recorded tenant only—Decree, if money decree only—Benamidars if necessary parties—Notice to annul incumbrances signed by Deputy Collector—Validity* The transfer of a permanent tenure is completed upon payment of the landlord's fee prescribed by s. 12 irrespective of its acceptance by the landlord and thereupon the landlord is bound to look to the transferee for payment of rent accruing due since

LANDLORD AND TENANT—*concld.*

9 RENT—*contd.*

that date It is not necessary in such a case that the transferor himself should have had his name registered in the landlord's books Where the landlord sues for such arrears of rent without making the transferee a defendant, the decree obtained in the suit only operates as a decree for money The landlord is not bound to join in his suit for rent, as parties defendants, persons who are merely *benamidars.* GIRIS CHANDRA GUHA *v* KHAGENDRA NATH CHATTERJEE (1911) **16 C. W. N. 64**

2. ——————— Failure of tenant to raise crop—*Suit by landlord for recovery of value of his share, if lies in Small Cause Court—Provincial Small Cause Courts Act (IX of 1887), Sch. II, Art. 8—"Rent"—"Damages for use and occupation."* Where a landlord brought a suit against his tenant claiming damages for wilfully omitting to raise crops whereby the plaintiff was deprived of his share thereof. *Held*, that inasmuch as the share of the produce to be received by the landlord was ascertained before the commencement of the suit and the term for which the land was let out had not terminated, the claim was in substance one for recovery of rent and the suit would not lie in the Small Cause Court. LALJI PANDAY *v* BARHAMDEO PANDAY (1911) **16 C. W. N. 89**

3. ——————— Rent decree, one decree for two different tenures—*Consolidation of tenures.* Where there are two different *darputni* tenures in respect of 13 as. and 3 as. respectively of a *putni*, with different assessments of rent held by the same tenant though it is competent to a landlord to bring one suit for both the tenures, the mere fact that the total rent of the two tenures is claimed in the same suit cannot have the effect of consolidating the two tenures into one. A decree obtained for arrears of rent in respect of two or more separate tenures cannot be executed as a rent decree under the Bengal Tenancy Act but must be executed as a money decree under the Civil Procedure Code. RASH MOHINI DASI *v.* DEBENDRA NATH SINHA (1911) **16 C. W. N. 395**

4. ——————— Tenant holding on after expiry of term—*Amount of rent payable.* When a tenant holds on after expiration of his lease he does so on the terms of the lease and at the same rate and on the same stipulations as are mentioned in the lease unless the parties come to a fresh settlement. The mere fact that the rent for some years has been received at a reduced rate does not bind the lessor to accept rent at that rate. *Durga Prosad Singh* v. *Rajendra Narain Bagchi, 10 C. L J. 570,* followed. *Quœre* Whether variation of the *kabuliyat* rent when the tenant is holding over can be established by oral evidence. *Sheik Enayutoollah* v. *Sheik Elaheebuksh, [1864] W. R., Act X, 42,* and *Sayaji bin Habaji* v. *Umaji bin Sadoji, 3 Bom. H. C. A. C. J.*

LANDLORD AND TENANT—*contd*

9. RENT—*contd.*

27, followed. *Mukund Chandra Sarma* v. *Arpan Ali, 2 C. W. N 47*, explained BAIJNATH PROSAD SAHU *v* RAGHUNATH RAI (1911)
16 C. W. N. 496

5. ——— **Denial of relationship of landlord and tenant**—*Bengal Tenancy Act (VIII of 1885)—Suit for rent, dismissal of—Appeal by landlord, withdrawal of—Suit for ejectment, if maintainable.* Mere denial of the relationship of landlord and tenant does not, in cases to which the Bengal Tenancy Act applies, work any forfeiture unless the denial has been given effect to by a decree of the Court. Where the landlord, after the dismissal of his suit for rent upon the tenant's denial of the relationship of landlord and tenant appealed, and pending the appeal withdrew the suit with liberty to bring a fresh suit and then brought an action to eject the tenant on the ground of such denial by the tenant. *Held*, that the only decree that could be relied on here was a decree which ceased to exist owing to the withdrawal of the suit by the landlord and so the denial of the relationship of landlord and tenant by the tenant would not work any forfeiture as it was not given effect to by a decree of the Court PYARI LAL HALDAR *v* HEM CHANDRA SARKAR (1912)
16 C. W. N. 730

6. ——— **Settled raiyat**—*Settlement proceedings, tenant setting up rent-free title in—Tenant entered as settled raiyat in Record-of-Rights as finally published—Suit to have rent assessed—Limitation.* Where more than 12 years before the landlord's suit for assessment of rent the tenant in the course of settlement proceedings set up a title to hold the land rent-free, but no actual decision of the question by the Settlement Officer was proved, though the record-of-rights, which was finally published within 12 years of the suit, showed that the tenant was entered as a settled *raiyat* in the village: *Held*, that it was open to the landlord to rely upon the entry in the record-of-rights as a tacit recognition of his right to have rent assessed, at any rate within 12 years of the date of final publication, and the suit therefore was not barred by limitation. *Maharaja Birendra Kishore Manikya Bahadur* v. *Rosan, 15 C. L J. 203; s c 16 C W N 931*, distinguished AMAN GAZI *v.* BIRENDRA KISHORE MANIKYA BAHADUR (1912)
16 C. W. N. 929

7. ——— **Assessment of rent.** A suit for assessment of rent brought more than 12 years after an adverse title had been set up, is barred by limitation. BIRENDRA KISHORE MANIKYA BAHADUR *v.* ROSAN (1912)
16 C. W. N. 931

8 ——— **Fixed-rate tenant**—*Liability of fixed-rate tenants for rent joint and several and not joint merely—Contract Act (IX of 1872), s 43. Held*, that the liability of joint holders of a fixed rate tenancy of payment of rent is joint and several and not joint only. The failure,

LANDLORD AND TENANT—*concld.*

9 RENT—*concld*

therefore, of the plaintiff in a suit for rent against several fixed-rate tenants jointly to bring upon the record the representatives of a deceased defendant is no bar to the continuance of the suit against the remaining defendants. *Joy Gobind Laha* v *Monmotha Nath Banerji, I L R. 38 Calc 580*, followed. *Muhammad Askar* v. *Radhe Ram Singh, I. L R 22 All 307*, referred to ABDUL AZIZ *v.* BASDEO SINGH (1912)
I. L. R. 34 All. 604

LAND REVENUE CODE (BOM. ACT V OF 1879).

——— **ss. 3 (11), 109, 197 and 217**—*'Holder'—A person in whom a right to hold land is vested—Occupants—Entry in the revenue register—Misunderstanding of an order—'Oversight'—Rectification of the register—Natural justice* The term 'holder' as defined by section 3 (11) of the Land Revenue Code (Bom. Act V of 1879) signifies the person in whom a right to hold land is vested Where persons are not 'holders' their claim as occupants cannot be supported by s. 217 of the Land Revenue Code (Bom. Act V of 1879). Where an entry in the revenue register was due to a misunderstanding of a certain order: *Held*, that the cause of the error being of the same nature as 'oversight' falling within the description of errors in s 109 of the Land Revenue Code (Bom. Act V of 1879), the rectification of the register, so as to bring it in accord with the order after hearing both parties, was not contrary to natural justice. It was a case in which the revenue officer concerned was authorized under s. 197 of the said Code to dispense with any judicial or quasi-judicial inquiry. WASUDEV LAKSHMAN *v.* GOVIND MAHADEV (1911) **I. L. R. 36 Bom. 315**

——— **s 10**—*Possessory suit—Collector's powers to revise—The powers can be exercised by Assistant Collector in charge of the District—Bombay Mamlatdar's Court Act (Bom Act II of 1906), s. 23* An Assistant Collector, who is placed in charge of portions of a district under s. 10 of the Bombay Land Revenue Code (Bom. Act V of 1879), has the power to exercise all the powers conferred upon the Collector by s 23 of the Bombay Mamlatdar's Courts Act (Bom. Act II of 1906) KESHAV *v.* JAIRAM (1911)
I. L. R. 36 Bom. 123

——— **s. 37**—*Order—Suit to set aside order—Collector—Order ultra vires—Limitation Act (XV of 1877), Sch II, Art. 14* Article 14 of the Second Schedule of the Indian Limitation Act only applies to orders passed by a Government officer "in his official capacity." The article does not apply to orders which are *ultra vires* of the officer passing them When a Collector passes an order, under the provisions of s 37 of the Land Revenue Code (Bom. Act V of 1879), with reference to land which is *primâ facie* the property of an individual who has been in peaceful possession thereof and

LAND REVENUE CODE (BOM. ACT V OF 1879)—*contd*

——— s. 37—*concld*

not of the Government, he is not dealing with that land in his official capacity, but is acting *ultra vires* MALKAJEPPA *v.* SECRETARY OF STATE FOR INDIA (1911) **I. L. R. 36 Bom. 325**

——— **ss 56, 214, rules 32, 62, 68**—*Occupancy—Non-payment of assessment—Forfeiture of occupancy—Re-grant to fresh occupants—Restoration of holding to original occupants—Collector, powers of* Owing to non-payment of assessment to Government, an occupancy was forfeited under s. 56 of the Bombay Land Revenue Code (Bom. Act V of 1879), and was thereafter disposed of by the Collector, under rules 32 and 62 framed under s 214 of the Code, to the defendants who signed *kabulayats* Some years after this, the Collector ordered the same occupancy to be taken from the defendants and given to the plaintiffs who had been occupants before the forfeiture. The defendants having declined to deliver up possession were sued by the plaintiffs *Held*, that the Collector was not empowered by the rules framed under s. 214 of the Code to pass the order he did ; and that the plaintiffs were, therefore, not entitled to succeed. Rule 68 of the rules framed under s. 214 of the Bombay Land Revenue Code, 1879, empowers a Collector to restore a forfeited occupancy to the original occupant. But when a forfeited occupancy has been disposed of by grant to a new occupant, it ceases to be forfeited occupancy and the rule has no longer any application DHARMA BAL PATIL *v.* BALAMIYA (1911)
I. L. R. 36 Bom. 91

——— **ss. 102, 106**—*Survey and Settlement Act (Bom. Act I of 1865), ss 25, 28, 37, 38 (1)—Khoti village in Kolaba District—Survey and settlement—Introduction of "sanctioned" settlement—"Fixed or guaranteed"—Expiration of the period of "sanctioned" settlement—Continuance of the terms of the "sanctioned settlement" after the expiration of the period as still being sanctioned.* A question having arisen as to whether under the settlement of the *khoti* village in suit, which was sanctioned in 1863 and introduced in 1865 subject to all the provisions of the Survey and Settlement Act (Bom. Act I of 1865), and thereafter for a fixed period of twenty-seven years, the Government was entitled on the expiration of the said period of twenty-seven years to insist upon the terms imposed upon the Khot as between him and his tenants under the settlement as still being sanctioned. *Held*, that in 1892 when the fixed period of the settlement sanctioned in 1863 and introduced in 1865 came to an end, the terms which had been imposed upon the Khot under s 38 of the Survey and Settlement Act (Bom. Act I of 1865), when that settlement was introduced, remained in force, since the settlement itself must be deemed to have been then and still to have been sanctioned and that Government was within its rights in insisting upon the Khot accepting certain

LAND REVENUE CODE (BOM. ACT V OF 1879)—*concld,*

——— s. 102—*concld.*

clauses in the *kabuliyat* of that year. SECRETARY OF STATE FOR INDIA *v* SADASHIV ABAJI (1911)
I. L. R 36 Bom. 290

LARCENY.

See PENAL CODE (ACT XLV OF 1860), s. 379 **I L. R. 34 All 89**

LATHI PLAY.

See PENAL CODE, s. 121A
16 C. W. N 1105

LEASE.

See ESTOPPEL. **I. L. R. 39 Calc 513**

See LANDLORD AND TENANT—LEASE

See KABULIYAT.
I. L R 39 Calc. 1016

See TRANSFER OF PROPERTY ACT, s 107
I. L. R. 36 Bom 500

——— **document, varying terms of—**

See REGISTRATION.
I. L. R. 39 Calc 284

——— **variation in the terms of—**

See REGISTRATION
I. L R 39 Calc. 284

——— *Oral agreement to lease—Petition of compromise—Matters extraneous to the suit in which the petition of compromise was filed—Specific performance—Abwab* By a petition of compromise, which was filed in a previous suit between the parties concerning certain lands, the plaintiffs undertook to recognise the defendant as their tenant in respect of lands not included in that suit, and they further gave up their claim of *selami* for the recognition, on the defendant agreeing to pay an additional sum to what was payable by the original tenant Upon a suit brought by the plaintiffs for recovery of arrears of rent on the basis of this compromise, defence was that the petition of compromise was not admissible in evidence for want of registration : *Held*, that although the petition of compromise in so far as it related to properties which were not the subject-matter of the suit in which the decree was made, was not operative to affect such properties, it was admissible in evidence as indicating the existence of an oral agreement to grant a lease, which was specifically enforceable ; and the position of the parties was the same, as if a proper document had been executed and registered ; and that, therefore, the plaintiff was entitled to a decree. *Birbhadra Rath* v *Kalpataru Panda, 1 C. L J. 388*, and *Gurdeo Singh* v. *Chandrikah Singh, I L. R 36 Calc 193*, referred to The principle of *Walsh* v. *Lansdale, 21 Ch D 9*, applied *Held*, further, that the sum agreed to be paid by the defendant being in consideration of the land occupied by him, and also in view of the remission of the

LEASE—*concld.*

selami, was not an *abwab*. SARAT CHANDRA GHOSE *v* SHYAM CHAND SINGH ROY (1912)
I. L. R. 39 Calc. 663

LEAVE TO APPEAL.

See PRIVY COUNCIL
I. L. R. 39 Calc. 510

LEAVE TO APPEAL TO PRIVY COUNCIL.

See REVIEW. I. L. R. 39 Calc. 1037

LEGACY.

See LIMITATION ACT, 1877, SCH II, ART 123. I L. R. 36 Bom. 111

LEGAL NECESSITY.

See HINDU LAW—ALIENATION
I. L. R. 36 Bom. 88

See HINDU LAW—JOINT FAMILY.
I. L. R. 34 All. 4, 126, 135

See HINDU LAW—LEGAL NECESSITY.

LEGAL PRACTITIONER.

——— *Legal practitioner, dismissed for misconduct—Reinstatement on proof of good conduct.* Case in which a legal practitioner who, when yet a comparatively young man, had been dismissed from the rolls for misconduct was after five years reinstated on his furnishing certificates showing that during the interval his conduct has been so irreproachable that notwithstanding his previous delinquency he could be entrusted with the affairs of clients and admitted to an honourable profession without that profession suffering degradation. *In re Abiruddin, 15 C W. N. 357, s c 12 C. L. J. 625*, followed *In re* HARA KUMAR CHATTERJEE (1911)
16 C. W. N. 237

LETTERS OF ADMINISTRATION.

See ADMINISTRATION BOND
I L. R. 39 Calc. 563

LETTERS PATENT, 1865

——— cl. 10—

——— *Appeal—from a dissentient judgment in an appeal under s 10—Pre-emption—Wazib-ul-arz—Custom or contract—Partition of village—No new wazib-ul-arz framed—Construction of document——"Hissadar deh"* *Held*, that an appeal will lie under s. 10 of the Letters Patent from the judgment of a Judge who has differed from his colleague in an appeal under the same section. The *wajib-ul-arz* of an undivided village gave a right of pre-emption, first, to a near co-sharer (*hissadar karib*) and then to a co-sharer in the village (*hissadar deh*) Subsequently the village was divided by perfect partition into two mahals

LETTERS PATENT, 1865—*concld.*

——— cl 10—*contd.*

No new *wajib-ul-arz* was prepared In a suit for pre-emption by the co-sharers in one of the mahals consequent upon a sale of property situated in another mahal to a stranger. *Held*, that the right might be enforced notwithstanding the partition The meaning of the words *deh* and *mahal* discussed by KARAMAT HUSAIN, *J Dalganjan Singh* v *Kalka Singh, I L R 22 All 1*, and *Dori* v *Jiwan Ram, I L R 32 All 265*, referred to JIWAN RAM *v* TONDI SINGH (1911)
I. L. R 34 All. 13

——— cl 12—

See JURISDICTION.
I. L. R. 39 Calc. 739

——— *State Railway, suit for damages against, by servant, if may be brought against the Secretary of State for India in Council—Jurisdiction of High Court,—Cl. 12, Letters Patent, Calcutta High Court, 1865, leave to file plaint under, if defendant may question propriety when once granted—Secretary of State for India in Council, if a Body Corporate and if represents Government of India in all suits maintainable against Government—Sec. 65 of 21 & 22 Vict, c 106—Government carrying on business for State purposes, where may be sued—Railway Company, if a person carrying on business and where suit may be brought against it—Decision of a Bench of two Judges sitting on Original Side, if binding on a single Judge.* A servant of the Eastern Bengal State Railway was prosecuted at Rungpur on a charge of criminal breach of trust which resulted in his acquittal. He thereupon filed a plaint claiming damages for false and malicious prosecution against the Secretary of State for India in Council in the Calcutta High Court in which he craved leave under cl 12 of the Letters Patent of the High Court, 1865, for the institution of the suit in the said Court and the Court granted such leave. *Held*, that as the cause of action had arisen wholly outside the jurisdiction of the Calcutta High Court the leave was not properly granted and that the fact of the leave having been granted did not preclude the defendant from questioning the jurisdiction of the Court at the trial. Under s 65 of 21 & 22 Vict, c 106, the Secretary of State in Council is a Body Corporate for purposes of a suit and as such represents the Government of India in such suits as may be maintained against the Government By 21 & 22 Vict., c 106, such right of suit as individuals had against the East India Company were continued as against the Secretary of State. A Railway Company is a "person" "carrying on business" within the meaning of s 12 of the Letters Patent and it may be sued at the place of its principal office where the directors meet and the general business of the company is transacted or the brain-power of the business is A Government may be presumed to dwell in its own capital and a Government engaged in trades, though it may be for purposes of the State, carry on business there. *Doya Narain Tewary* v *Secre-*

LETTERS PATENT—*concld.*

——— cl. 12—*concld.*

tary of State for India, I L R 14 Calc 256, dissented from The judgment of Pigot, *J.*, in *Bipro Das Dey* v. *The Secretary of India, I. L R 14 Calc. 262n*, approved *Held*, that the former being the decision of two Judges sitting on the Original Side, presumably upon a reference by one of the Judges sitting singly on the Original Side, the decision is binding on a single Judge so sitting RODRICKS *v* THE SECRETARY OF STATE FOR INDIA (1912) **16 C. W. N. 747**

——— cl. 15—

See ARBITRATION—RIGHT OF APPEAL. **I. L. R. 39 Calc. 822**

——— *Judgment—Order of single Judge refusing to frame an issue not appealable as a judgment.* An order of a single Judge on the Original Side, refusing to frame an issue asked for by one of the parties is not a judgment within cl 15 of the Letters Patent and is not appealable. *Per* ARNOLD WHITE, *C J.*—An adjudication is a judgment within the meaning of the clause if its effect, whatever its form may be and whatever may be the nature of the application in which it is made, is to put an end to the suit or proceeding so far as the Court before which the suit or proceeding is pending is concerned or if its effect, if not complied with, is to put an end to the suit or proceeding. It is not necessary that the decision must affect the merits by determining some right or liability An adjudication based on a refusal to exercise discretion, is appealable if the effect of the adjudication is to dispose of the suit so far as the Court making the adjudication is concerned. *Per* V. KRISHNASWAMI AIYAR, *J*—The word 'judgment' in cl. 15 must be so construed as to include the various kinds of judgments dealt with in other clauses of the Letters Patent. It must be understood as including preliminary or interlocutory judgments, but not preliminary or interlocutory orders *Ebrahim* v. *Fukrunissa Begum, I. L R. 4 Calc. 531*, approved *D'Souza* v. *Coles, 3 Mad. H. C. R., 384*, commented upon, *Veerabhadran Chetty* v *Nataraja Desikar, I L R 28 Mad 28*, not approved. *Maruthamuthu Pillai* v. *Krishnamachariar, I. L R 30 Mad 143*, not approved. *Appasamy Pillai* v *Somasundara Mudaliar, I. L R 26 Mad. 437*, dissented from. *Chinnasamy Mudali* v. *Arumuga Gounden, I L R 27 Mad 432*, dissented from TULJARAM ROW *v.* ALAGAPPA CHETTIER (1910) **I. L. R. 35 Mad. 1**

LEX FORI.

See HABEAS CORPUS. **I. L. R. 39 Calc. 164**

LICENSE.

See EXCISEABLE ARTICLES **I. L. R. 39 Calc. 1053**

LIFE INSURANCE.

——— money payable under—

——— *Policy of Life Insurance—Money payable under—Such money forms part of estate of assured and is recoverable by his representatives* Where the assured does not, in his life-time, create any trust in respect of the money payable under a policy of Life Insurance for the benefit of his wife and children, such money, in cases where the provisions of the Married Woman's Property Act do not apply, forms part of his estate and is recoverable by his legal representatives. The contract between the Company and the assured gives no right of action to the beneficiaries named Where the Company refuses payment on the death of the assured, the legal representatives and not the beneficiary will be entitled to enforce the contract. The Company will be bound to pay the amount to a person who has obtained a succession certificate under s. 16 of the Succession Certificate Act *Cleaver* v *Mutual Reserve Fund Life Association, [1892] 1 Q B. 147*, referred to. ORIENTAL GOVERNMENT SECURITY LIFE ASSURANCE, LIMITED *v.* VANTEDDU AMMIRAJU (1911) . **I. L. R. 35 Mad. 162**

LIGHT AND AIR.

See EASEMENT. **I. L. R. 39 Calc. 59**

LIMITATION.

See APPEAL TO PRIVY COUNCIL. **I. L. R. 39 Calc. 766**

See BENGAL REGULATION (XV OF 1793). **I. L. R. 34 All. 261**

See CIVIL PROCEDURE CODE, 1882, s. 230. **I. L. R. 34 All. 396**

See CIVIL PROCEDURE CODE, 1908, s 48. **I. L. R. 34 All. 20**

See CIVIL PROCEDURE CODE, 1908, s. 48. **I. L. R. 36 Bom. 368**

See CONTRACT. **I. L. R. 34 All. 429**

See DEKKHAN AGRICULTURISTS' RELIEF ACT, ss. 39, 48. **I. L. R. 36 Bom. 183**

See EX PARTE DECREE **I. L. R. 39 Calc. 506**

See IDOL **I. L. R. 36 Bom. 135**

See LIMITATION ACT (XV OF 1877), s 19. **I. L. R. 34 All. 371**

See LIMITATION ACT (XV OF 1877), SCH II, ART. 178 . **I. L. R 34 All. 436**

See LIMITATION ACT (XV OF 1877), SCH. II, ARTS. 110, 116. **I L. R. 34 All. 464**

See LIMITATION ACT (IX OF 1908), s 29. **I L R 34 All 412**

See LIMITATION ACT (IX OF 1908), s 31. **I. L. R. 34 All 375**

See LIMITATION ACTS

LIMITATION—*contd*

See MAHOMEDAN LAW—ALIENATION. **I. L. R. 34 All. 213**

See MORTGAGE . **I. L. R. 34 All. 620**

See PRIVY COUNCIL—LEAVE TO APPEAL TO . . **I. L. R. 39 Calc. 510**

See PROVINCIAL INSOLVENCY ACT (III OF 1907), S 46 (*4*) **I. L. R. 34 All. 496**

See SPECIFIC RELIEF ACT (I OF 1887), S. 30 . . **I. L. R. 34 All. 43**

——— question of—

See HIGH COURT, JURISDICTION OF **I. L. R. 39 Calc. 473**

1. ——— **Adverse possession**—*Rent-free tank—Setting up hostile title to the knowledge of the landlord*—Lakhiraj *title* In a suit for recovery of possession of a tank with its banks by establishment of plaintiff's zamindari title thereto, and in the alternative for assessment of rent, the defendant pleaded that the tank was rent-free and that the suit was barred by limitation It appeared that the defendant more than twelve years ago, in the settlement proceedings, claimed the tank as rent-free without any reference to any *sanad*, and the plaintiff's agent denied the claim: *Held*, that, inasmuch as a complete hostile right was claimed by the defendant to the knowledge of the plaintiff, and as no suit was brought until more than twelve years after, the suit as framed was barred by limitation. BIRENDRA KISHORE MANIKYA *v.* ROSHAN ALI (1912) **I. L. R. 39 Calc. 453**

2 ——— **Symbolical possession**—*Court-sale—Symbolical possession by purchaser—Judgment-debtor remaining in actual possession—Civil Procedure Code (Act XIV of 1882), ss. 263, 264, 318, and 319—Civil Procedure Code (Act V of 1908), O. XXI, r. 5 (2).* Merely formal possession of immoveable property by a purchaser at a Court-sale cannot prevent limitation running in favour of the judgment-debtor where the latter remains in actual possession and the property is not in the occupancy of a tenant or other person entitled to occupy the same. Symbolical possession is not real possession nor is it equivalent to real possession under Civil Procedure Code except where the Code expressly or by implication provides that it shall have that effect. *Gopal* v. *Krishnarao, I L. R. 25 Bom. 275* and *Mahadeo* v. *Parashram Bhawanchand, I L. R. 25 Bom. 358*, overruled MAHADEV SAKHARAM *v* JANU NAMJI HATLE (1912) **I. L. R. 36 Bom. 373**

3. ——— **Conciliation**—*Dekkhan Agriculturists' Relief Act (XVII of 1879), ss 39, 48—Time taken up in conciliation proceedings—Exclusion of time.* The plaintiff sued on a promissory note dated the 12th of June 1905. He first applied on the 23rd May 1908 for a conciliator's certificate under s. 39 of the Dekkhan Agriculturists' Relief Act, 1879, and obtained it on the 31st August 1908; then on the 10th September 1908, both he and the defendant made a joint application for conciliation. The conciliator held that the first certificate that he had granted had become useless, and gave a fresh certificate on the 3rd December 1908 The suit was brought on the 11th December 1908. It was contended that the suit was barred by limitation *Held*, that the suit was within time, inasmuch as the whole proceeding from the 23rd of May 1908 to the 3rd of December 1908, was one and continuous, and that period should be excluded under s. 48 of the Act. DEVIDAS *v* VITHALDAS, (1911) **I. L. R. 36 Bom. 183**

LIMITATION—*concld.*

4. ——— **Suit for sale on mortgage**—*Period of limitation changed with provision for pending suits at passing of Act—Limitation Act (XV of 1877), Sch II, Arts 132, 147, Limitation Act (IX of 1908), s 31, sub-s (1)—Order of His Majesty in Council holding applicable—Shorter period of limitation than provided by Act subsequently passed.* The Limitation Act (IX of 1908) which came into force on 7th August of that year after providing by s 31, sub-s. 1 "for a suit for sale by a mortgagee," a period of "sixty years from the date when the money secured by the mortgage became due," enacts that "no suit instituted within the said period of sixty years and pending at the date of the passing of the Act . . . . shall be dismissed on the ground that a twelve years' rule of limitation is applicable." In a suit for sale on a mortgage dated 22nd September 1883, instituted on 23rd September 1899, the defence was limitation which the plaintiff avoided by alleging payments of interest and settlement of accounts. The first Court found that part of the claim was barred by the twelve years' period of limitation provided by Art. 132, Sch. II of the Limitation Act, 1877 The High Court in appeal held that the suit was governed by Art 147 which allowed a period of sixty years, and that no part of it was barred On appeal to His Majesty in Council the decision of the High Court was reversed, and by an order in Council it was declared that "Art 132 is the article which provided the period of limitation applicable," and the case was "remitted to the High Court to be disposed of in accordance with such declaration" So remitted, the case came before the High Court on 16th August 1908 after the passing of the Limitation Act, IX of 1908, and that Court holding that s. 31 of that Act applied, disposed of the suit as they had previously done in favour of the plaintiff. *Held* by the Judicial Committee (affirming that decision), that the suit was "pending" at the time of the passing of Act IX of 1908 The judgment remitting the case did not end the suit, nor finally determine it. It was remitted for further procedure and enquiry on allegations of fact: and at the passing of Act IX of 1908 that procedure was not concluded and the enquiry not entered upon The suit in fact was neither adjudged upon nor ready for judgment. VASUDEVA MUDALIAR *v.* SADAGOPA MUDALIAR (1912) **I. L. R. 35 Mad. 191**

LIMITATION ACT (XIV OF 1859)

——— s. 1 (*12*)—

See BENGAL REGULATION XV OF 1793.
I. L. R. 34 All. 261

LIMITATION ACT (XV OF 1877).

——— s. 2, Sch. II, Art. 35—

See LIMITATION ACT (IX OF 1908), s. 29.
I. L. R. 34 All. 412

——— s. 5—*Suit for order directing registration of document—3 days expiring during a Court holiday—Suit instituted on re-opening day if barred.* The provisions of s 5 of the Limitation Act apply to suits under s 77 of the Registration Act (III of 1877) When, therefore, the period of limitation provided in that section for a suit for an order directing the registration of a document expired during the X'mas holidays · *Held,* that the suit if instituted on the day the Court re-opened would not be barred by limitation *Nijabatoollah* v. *Wazir Ali, I L R. 8 Calc 910.* followed MATABBAR MOLLAH *v* SASI BHUSAN GHATAK (1911)
16 C. W. N. 20

——— s. 19—

1. ——— **Acknowledgment**—*Judgment-debt, acknowledgment of—Debt specified in insolvency petition.* An application for execution of a decree was not time-barred though made more than three years after a previous application, where it appeared that the judgment-debtor had in the meanwhile filed a petition of insolvency in which the judgment-debt in question was specified The petition, though it might not have been addressed to the creditors, was nevertheless an acknowledgment within s 19 of the Limitation Act *Manram Sett* v *Seth Rupchand, I L R 33 Calc 1047 10 C. W N 874,* relied on. RAMPAL SINGH *v* NAND LAL MARWARI **16 C. W. N. 346**

2. ——— *Mortgage—Redemption—Limitation—Acknowledgment. Held,* that an acknowledgment of the title of the mortgagor made by only one of two mortgagees would not avail to save the mortgagor's right to redeem being barred by limitation where the mortgage was a joint mortgage and incapable of being redeemed piecemeal *Dharma* v *Balmakund, I. L R 18 All. 458.* followed JWALA PRASAD *v.* ACHCHEY LAL (1912) **I. L. R. 34 All. 371**

——— ss. 19, 20. 21—

——— **Acknowledgment by one partner binding on others.** The mere fact that one of the partners of a going concern is in charge of a branch of such concern cannot lead to the inference that such partner has authority to bind the firm by an acknowledgment when pressed for payment A letter by one of two partners to a creditor acknowledging the debt due and asking such creditor to correspond with, and supply goods to, the other partner on behalf of the firm, cannot be construed as authorizing such other partner to make an acknowledgment which will bind the firm for the purposes of limitation. SHAIK MOHIDEEN SAHIB *v.* THE OFFICIAL ASSIGNEE OF MADRAS (1911)
I. L. R. 35 Mad. 142

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 19—*concld.*

——— s. 26—

See FISHERY . **I. L. R. 39 Calc. 53**

——— s. 28, Sch. II, Arts 124, 144—

See RELIGIOUS FOUNDATION
I. L. R. 35 Mad. 92

——— Sch. II, Art. 14—

——— *Order—Suit to set aside order—Collector—Order ultra vires—Land Revenue Code (Bom Act V of 1879), s 37.* Art 14 of the Second Schedule of the Indian Limitation Act only applies to orders passed by a Government Officer "in his official capacity" The article does not apply to orders which are *ultra vires* of the officer passing them When a Collector passes an order, under the provisions of s. 37 of the Land Revenue Code (Bom. Act V of 1879), with reference to land which is *primâ facie* the property of an individual who has been in peaceful possession thereof and not of the Government, he is not dealing with that land in his official capacity, but is acting *ultra vires.* MALKAJEPPA *v.* SECRETARY OF STATE FOR INDIA (1911)
I. L. R. 36 Bom. 325

——— Sch. II, Arts. 44, 144—

See MAHOMEDAN LAW—ALIENATION.
I. L. R. 34 All. 213

——— Sch II, Arts. 110, 116—

——— *Suit to recover rent on a registered lease—Limitation. Held,* that a suit for the recovery of rent based upon a registered lease, is governed as to limitation, not by Art 110, but by Art 110, of the Limitation Act, 1877. *Ram Narain* v. *Kamta Singh, I L R 26 All 138,* followed. JAGGI LAL *v* SRI RAM (1912)
I. L. R. 34 All. 464

——— Sch. II, Art. 116—

See CONTRACT . **I. L. R 34 All. 429**

——— Sch. II, Art. 118—

See CUSTOM . **I. L. R. 39 Calc. 418**

——— Sch. II, Art. 123—

——— *Suit to recover legacy—Legacy not assented to by executor—Probate and Administration Act (V of 1881), s. 112—Mahomedan Law—Shiahs—Wakf—Bequest for Gadi-ul-lhum feast—Fatiah dinners—Valid bequest— Cypres.* Art 123 of the Second Schedule of the Limitation Act, 1877, applies to a suit where the substantial claim is to recover a legacy, even though not assented to by the executor, and whe-

LIMITATION ACT (XV OF 1877)—*contd.*

Sch. II, Art. 123—*concld.*

ther or not the suit involves the administration of the whole estate A Shiah Mahomedan directed his executors by his will to spend a portion of the income of his property upon the following charitable or religious objects: (i) The Gadi-ul-khum feast at Mecca; (ii) The Gadi feast at Rehmanpura in Surat; and (iii) a Fattiah dinner on the testator's and his wife's account. The Gadi feasts were to celebrate the appointment of Ali as successor of the Prophet. *Held*, that the first two bequests were valid, but the validity of the third bequest was doubtful *Kaleeloola Sahib* v. *Nuseerudeen Sahib, I. L R 18 Mad 201, Zooleka Bibi* v *Zynul Abedin, I L R. 6 Bom L R 1058* and *Biba Jan* v *Kalb Husain, I. L R. 31 All 136*, followed. Where the testator has indicated a general charitable intention in the bequest made by him and if these bequests fail, the Court can devote the property to religious or charitable purposes according to the *cypres* doctrine. SALEBHAI ABDUL KADER *v* BAI SAFIABU (1911) **I. L. R. 36 Bom. 111**

Sch. II, Art. 124—

See SHEBAIT. **I. L. R. 39 Calc. 887**

Sch II, Art. 132—

See MORTGAGE **I. L. R. 39 Calc. 527**

Sch. II, Art. 144—

Summary Cess—Interest in immoveable property The right to levy summary cess, whether it originated in agreement or in unlawful exaction, is an interest in immoveable property and is governed by twelve years' limitation under Art 144 of the Limitation Act (XV of 1877). RANMALSINGJI *v* MAHASHANKAR (1911) **I. L. R. 36 Bom. 174**

Sch. II, Art. 164—

See EX PARTE DECREE. **I. L. R. 39 Calc. 506**

Sch. II, Art. 178—

Limitation Act (IX of 1908) s 15—Execution of decree—Limitation—Execution stayed by injunction. In execution of a decree certain property was attached by the decree-holder by means of an application made on the 8th of July 1904 Objection was taken to the attachment, which was disallowed on the 10th of March 1908 This was followed up on the 5th of April, 1905, by a declaratory suit against the decree-holder An injunction was also granted on the 6th of April, 1905, whereby the sale of the property in suit was stayed The suit terminated on the 26th of June, 1907, but the injunction lasted until January 1909. The next application for execution was made on the 14th of April, 1910 *Held*, that this last application was within time whether the Limitation Act of 1877 or that of 1908 applied. It was not relevant that the decree-holder might possibly have obtained execution of the decree against other property of his judgment-debtor. *Behari Lal Misir* v. *Jagannath Prasad, I L R. 28 All 651*, followed GHULAM NASIR-UD-DIN *v* HARDEO PRASAD (1912) **I. L. R. 34 All. 436**

LIMITATION ACT (XV OF 1877)—*concld.*

Sch. II, Art. 178—*concld.*

holder might possibly have obtained execution of the decree against other property of his judgment-debtor. *Behari Lal Misir* v. *Jagannath Prasad, I L R. 28 All 651*, followed GHULAM NASIR-UD-DIN *v* HARDEO PRASAD (1912) **I. L. R. 34 All. 436**

LIMITATION ACT (IX OF 1908).

Cause of action. Nothing in the Limitation Act can give rise to a cause of action unless a right to sue exists independently of its provisions. BISHUN SINGH *v* A W N. WYATT (1911) . . **16 C. W. N. 540**

ss. 5, 12, Sch. I., Art. 179—

See APPEAL TO PRIVY COUNCIL. **I. L. R. 39 Calc. 766**

s. 6, Art. 164—

Application to set aside ex parte decree made after coming into force of Act governed by art 164—S 7, of old Act XV of 1877, does not apply—S 6 of General Clauses Act (X of 1897) does not make the new Act inapplicable A decree was passed *ex parte* against *A*, a minor, on the 4th September, 1894 *A* became a major on 16th January, 1909, and applied on 25th January, 1909, to set aside the decree: *Held*, that the Limitation Act (IX of 1908) which came into force on 1st January, 1909, applied and the application was barred under Art 164 of the Act Under s. 6 of the Act, the plea of minority was available only in the case of suits and applications for execution. S 6 of the General Clauses Act (X of 1897) had not the effect of making the new Act inapplicable *Kali Amma* v *Palappakkara Manakal, 20 Mad L. J. 347*, followed CHIDAMBARAM CHETTY *v* KARUPPAN CHETTY (1912) **I L R. 35 Mad. 678**

s. 9—

See CIVIL PROCEDURE CODE, 1908, s. 48. **I. L. R 36 Bom 498**

s. 10—

See KHOJA MAHOMEDANS **I. L R. 36 Bom. 214**

s. 12—

Time requisite for obtaining copy—Application for copy made on date the Court closed for annual vacation—Notice posted during the vacation—Copy received after vacation. Where an application for copies of a judgment and decree was made on the day when the Court rose for its annual vacation, it was *held* that the applicant was entitled to the benefit of the whole period of the vacation, notwithstanding that the copying department was kept open for some days and a notice posted during the vacation that the applicant's copies were ready KHUB CHAND *v* HARMUKH RAI (1911) **I L R. 34 All. 41**

LIMITATION ACT (IX OF 1908)—*contd.*

——— ss. 12, 29—

See PROVINCIAL INSOLVENCY ACT (III OF 1907), s 46 (*4*)
I. L. R. 34 All 496

——— s 12, Sch. I, Art 179—

See LIMITATION ACT (IX OF 1908), s. 12, SCH. I, ART. 179.
I L. R. 39 Calc. 510

——— s. 15—

See LIMITATION ACT (XV OF 1877), SCH II, Art. 178 I. L R. 34 All. 436

——— s. 19—

See ACKNOWLEDGMENT.
I. L. R. 39 Calc. 789

1. ——— **Acknowledgment**—*Joint judgment-debtors—Acknowledgment by one portion of debt—Effect.* Acknowledgment of a judgment-debt by one of several judgment-debtors keeps alive the decree against such judgment-debtor alone and not against the others. *Richardson* v. *Younge, L R 6 Ch Ap. 418, Bhogilal* v *Amritlal, I. L. R. 17 Bom 173, Dharma* v. *Balmukund, I. L. R 18 All 458,* distinguished *Narayana* v. *Venkata. I. L. R 25 Mad. 220, Vala Subramania Pallai* v *Ramanathan Chettiar, I. L. R. 32 Mad. 421, Ahsanullah* v. *Dakkhini Din, I. L R 27 All. 575,* relied on. If a part only of the debt is acknowledged it is kept alive to that extent only. CHANDRA KUMAR DHAR *v* RAMDIN PODDAR (1912)
16 C. W. N. 493

2. ——— *Limitation—Acknowledgment by agent—Law to be applied to test the validity of an acknowledgment Held,* that the criterion to be applied to test the validity of an acknowledgment of liability put forward by a plaintiff as extending the period of limitation in his favour, is the law in force at the time when the plaintiff's suit would otherwise have been time-barred and not that in force at the time when the acknowledgment relied upon was made *Mohesh Lal* v. *Busunt Kumaree, I. L R 6 Calc 340, Rahmani Bibi* v *Halasa Khan, I L R 1 All 642,* and *Hanuman Prasad* v. *Raghunandan Singh, 1 All. L J. 355,* referred to. ZAIB-UN-NISSA BIBI *v.* THE MAHARAJA OF BENARES (1911)
I. L. R. 34 All. 109

——— s. 26—

See EASEMENT . I. L. R. 39 Calc. 59

——— s. 29—

——— *Limitation Act (XV of 1877), s. 2, Sch II. Art 35—Suit for restitution of conjugal rights—Limitation* The plaintiff in a suit for restitution of conjugal rights filed in 1910, alleged that his wife had been taken away by two of the defendants under a promise that she should return to him shortly, but subsequently they denied all knowledge of her whereabouts. In 1909, he alleged, he was informed that she was living at a

LIMITATION ACT (IX OF 1908)—*contd*

——— s. 29—*concld*

certain place with one of the defendants. *Held* that the plaintiff's suit was not barred by limitation *Binda* v. *Kaunsilia, I. L. R. 13 All. 227,* referred to. AYESHA *v.* FAIYAZ HUSAIN (1912)
I. L. R. 34 All. 412

——— s. 31—

——— *Mortgage—Suit for sale—Limitation—General Clauses Act (X of 1897), s. 10* The special period of limitation for suits for foreclosure or for sale by a mortgagee prescribed by s. 31 of the Indian Limitation Act, 1908, namely, two years from the date of the passing of the Act, expired on a Sunday. *Held,* that a suit for sale to which s. 31 applied instituted upon the following Monday was within time. *Shevdas Daulatram Marwadi* v. *Narayen valad Asaji, 13 Bom. 1153,* dissented from. HIRA SINGH *v.* MUSAMMAT AMARTI (1912) I. L. R. 34 All. 375

——— s. 31 (*1*)—

——— *Period of two years for filing suits—Period not "prescribed"—Last day Sunday—Suit filed on Monday next—Limitation.* A question having arisen as to whether a suit for which provision is made under s. 31 (*1*) of the Limitation Act (IX of 1908) if instituted on a Monday, one day after the period of two years from the date of the passing of the Act has expired, can be taken to have been instituted within the period of two years. *Held,* that the suit could not be taken to have been instituted within the period of two years and that two years specified in s. 31 of the Limitation Act (IX of 1908) was not the period of limitation prescribed. SHEVDAS DAULATRAM *v.* NARAYEN (1911)
I. L. R. 36 Bom. 268

——— Sch. I, Art. 11—

——— *Dekkhan Agriculturists' Relief Act (XVII of 1879), ss 47 and 48—Transfer of Property Act (IV of 1882), s 85—Agriculturist Mortgagor—Suit—Conciliator's certificate—Mortgagor necessary party along with other persons interested—Exclusion of time spent in obtaining Conciliator's certificate—Limitation* Defendants 1 and 2 brought a suit on a mortgage against defendant 3 and while the suit was pending, defendant 3 mortgaged the same property, namely, a house along with other properties to the plaintiffs Defendants 1 and 2 having obtained a decree, they applied for execution and sought to recover the decretal debt by sale of the house Thereupon, the plaintiffs intervened and applied that the house should be sold subject to their mortgage lien The plaintiff's application being disallowed they brought a suit against defendants, 1, 2 and 3 to establish their right founded on their mortgage. The suit was brought within one year of the order rejecting their application after the exclusion of the time taken up in obtaining the Conciliator's certificate under ss 47 and 48 of the Dekkhan Agriculturists' Relief Act (XVII of 1879), defend-

LIMITATION ACT (IX OF 1908)—*contd.*

Sch. I, Art. 11—*contd*

ant 3 being described in their mortgage as an agriculturist. Defendants 1 and 2 contended that defendant 3 being not a necessary party, the Conciliator's certificate was unnecessary and the suit was time-barred. *Held*, that under the provisions of the Transfer of Property Act (IV of 1882), defendant 3 was a necessary party to the suit which was brought on the strength of the mortgage and he being an agriculturist, the Conciliator's certificate was necessary and the suit was, therefore, not time-barred. EKNATH PANDOBA *v.* DAGADURAM (1912) . . . **I. L. R. 36 Bom. 624**

Sch. I, 49—

Limitation begins to run upon refusal to return property detained. Where a person to whom moveable property is entrusted to be returned on the fulfilment of certain conditions, retains such property after such conditions are fulfilled, he will be deemed to be in possession on behalf of the person entitled, until he refuses delivery: mere silence on demand being made will not constitute such refusal. The period of limitation for a suit to recover the property thus detained will, under Art 49 of Sch. I of the Limitation Act, run from the date when the defendant refuses to deliver such property. GOPALASAMI AYYAR *v.* SUBRAMANIA SASTRI (1912) **I. L. R. 35 Mad. 636**

Sch. I, Arts. 113, 116, 120—

See SPECIFIC RELIEF ACT, 1877, s. 30. **I. L. R 34 All. 43**

Sch. I, Arts. 116, 120, 131, 132—

Suit to recover arrears of annuity charged on immoveable property—Claim for personal decree only—Limitation Held, that Art. 132 of the first Schedule to the Indian Limitation Act is applicable only to suits in which the plaintiff claims to recover money charged upon immoveable property to raise it out of that property, and not to a claim in which merely personal decree is asked for *Ramdin* v *Kalka Prasad, I L. R 7 All. 502*, followed. *Held*, also, that the words of Art. 131 to establish a periodically 'recurring right' are altogether inapplicable to a suit to recover arrears of payments due under a registered contract. *Dost Muhammad Khan* v *Sohan Singh, Punj. Rec, 1906, p 303*, followed. A suit of such a nature is governed by either Art 116 or Art. 120 of the first Schedule to the Indian Limitation Act. LACHMI NARAIN *v.* TURAB-UNNISSA (1911) . . . **I. L. R. 34 All. 246**

Sch. I, Art. 152—

Limitation—Appeal—Jurisdiction—Appeal presented to Judge at his private house after court hours A memorandum of appeal was presented to a District Judge at his private house, after court hours on the last day of limitation *Held*, that the Judge had jurisdiction to accept the memorandum of appeal so presented, though he was not obliged to do so. *Jai Kuar* v. *Heera Lal, 7 N -W P. H. C. Rep 5*, overruled THAKUR DIN RAM *v* HARI DAS (1912) **I. L. R. 34 All. 482**

LIMITATION ACT (IX OF 1908)—*concld*

Sch. I, Art. 152—*concld.*

Sch. I, Art. 164—

See EX PARTE DECREE. **I. L. R. 39 Calc. 506**

Sch. I, Art. 179—

Decree—Execution proceedings—Application for time to obtain copies of decree and judgment—Step-in-aid of execution. An application for time to enable the applicant to obtain copies of decree and judgment, made after presenting a *darkhast* to execute a decree is a step-in-aid of execution *Kunhi* v *Seshagiri, I L R 5 Mad. 141*, followed. *Kartick Nath Pandey* v. *Juggernath Ram Marwari, I L. R 27 Calc. 285*, dissented from. HARIDAS NANABHAI *v* VITHALDAS KISANDAS (1912) **I. L. R. 36 Bom. 638**

LIMITATION ACTS (XV OF 1877 AND IX OF 1908).

Art. 134—

Mortgage—Transfer by mortgagee—Rights of the transferee—Redemption—Construction of statute—Legislative exposition. The plaintiffs sued in the year 1906 to redeem a mortgage effected prior to the year 1854 The representatives-in-title of the mortgagee, claiming to be absolutely entitled, mortgaged the land with possession to *A* in 1894 and he sold his rights to defendant 5. The suit having been brought more than 12 years after the alienation to *A*, defendant 5 claimed as against the plaintiffs the interest of a mortgagee by virtue of his adverse possession under Art 134 of the Limitation Act (XV of 1877). *Held*, that it was obligatory on the plaintiffs to redeem defendant 5 before they could recover possession of the property. *Yesu Ramji Kalnath* v. *Balkrishna Lakshman, I. L. R. 15 Bom. 583, Malun* v *Fakirchand, I L R 22 Bom. 225* and *Ramchandra* v. *Sheikh Mohidin, I. L R. 23 Bom 614*, followed *Abharram Goswami* v *Shyama Charan Nandi, L. R 36 I A 148*, and *Ishwar Shyam Chand Jiu* v. *Ram Kanai Ghose, I L R 38 Calc 526*, explained The alteration in the language of Art 134 of the Limitation Act (IX of 1908) was a legislative recognition of the soundness of the view that the Article was intended to give protection to all transferees for value including mortgagees *Swift* v *Jewsbury, L R 9 Q B. 312*, and *Morgan* v. *London General Omnibus Company, 12 Q B D. 201*, referred to BAGAS UMARJI *v* NATHABHAI UTAMRAM (1911) **I. L. R. 36 Bom. 146**

LIQUIDATORS IN POSSESSION.

See MORTGAGE. **I. L. R. 39 Calc. 810**

LIS PENDENS.

See RES JUDICATA.
I. L. R. 36 Bom. 189

LOCAL INSPECTION

——————— *Results of inspection not recorded at the time but embodied in the trying Magistrate's judgment—Effect of omission of contemporaneous record—Facts so found not impugned before the Appellate Court—Legality of the conviction—Prejudice.* A Magistrate trying a case may view the place of occurrence in order to follow or understand the evidence, but he should be careful not to allow any one on either side to say anything to him which might prejudice his mind one way or the other *In re Lalji, I. L. R. 19 All. 302*, approved of There is nothing in the Criminal Procedure Code to prevent a Magistrate from holding a local investigation for the purpose of elucidating any matter in dispute, and in so far as it conforms to the provisions of the law of evidence it cannot be excluded. He should place on record the results of the local investigation, but it is not a positive rule of law that a note thereof must be made on the spot. Where the facts established by the local investigation are impugned, and there is no contemporaneous record of them, the Appellate Court cannot act on them ; but if they are not impugned, the Court cannot exclude them from consideration, because there is no such record when the accused is not prejudiced by the irregularity. *Joy Coomar* v. *Bundhoo Lall, I. L R 9 Calc 363*, followed. *Babbon Sheikh* v. *Emperor, I. L. R. 37 Calc 340*, *Girish Chunder Ghose* v. *Queen-Empress, I. L. R. 20 Calc 857*, distinguished. Where the defence suggested that the alleged place of occurrence, a mound of earth, was not scalable, nor large enough to accommodate the number of assailants said to have been present, upon which the trying Magistrate inspected the locality and found the facts against the accused, but made no separate note thereof on the record of the time, though he embodied them in his judgment, and they were not impugned before the Appellate Court, but it was sought to exclude them on the ground of the omission of such note : *Held*, that the omission of the Magistrate to record a note of the results of the local inspection at the time had not prejudiced the accused, and that the conviction was not bad on that ground ATTAR RAI *v* EMPEROR (1912) I. L. R. 39 Calc. 476

LOAN.

See CONTRACT ACT, S. 74.
I. L. R. 36 Bom. 164

LOSS OF GOODS.

See CARRIERS. I. L. R. 39 Calc. 311
See RAILWAY COMPANY
16 C. W. N. 766
See " SHAWLS, " MEANING OF.
I. L. R. 39 Calc. 1029

LOVE POTION.

See CAUSING DEATH BY RASH OR NEGLIGENT ACT I. L. R. 39 Calc. 855

LUNACY ACT (XXXV OF 1858).

——————— s. 14—

——————— *Guardian of lunatic, powers of—Lease, unauthorised, for more than five years if void or voidable—Avoiding a lease, suit if must be brought for* A lease for more than five years granted by the guardian of a lunatic without the authority of the Court as required by s 14 of the Lunacy Act is voidable and not void. It is not necessary that a suit should be brought to avoid the lease and when the plaintiff on becoming *sui juris* brought a suit for damages in respect of occupation of the land leased, electing to treat the lease as a nullity : *Held*, that there was sufficient avoidance of the lease TARINI KANTA BHATTACHARJEE *v* BHABANI NATH DEY SARKAR (1912)
16 C. W. N. 762

M

MADRAS ACTS.

——————— 1864—II.

See MADRAS REVENUE RECOVERY ACT.

——————— 1865—VII

See MADRAS WATER CESS ACT.

——————— 1865—VIII.

See MADRAS RENT RECOVERY ACT.

——————— 1900—I

See MALABAR TENANTS' IMPROVEMENT ACT.

MADRAS RENT RECOVERY ACT (VIII OF 1865).

——————— ss 3, 11—*Right of landlord to enhance rent on dry land cultivated with garden crop by wells dug at tenant's cost—No such right in the absence of a contract supported by consideration.* Dry lands liable to pay a fixed rent were cultivated with garden crops by the tenant by means of wells excavated at his cost with the consent of the landlord. The landlord claimed, and the tenant for some years paid, an enhanced rate of rent for the crop so raised. In a suit by the tenant to compel the landlord to grant pattas at the usual dry rate, it was contended for the landlord that a contract to pay the enhanced rate must be implied from the payment for a number of years of such rate and that such contract was supported by consideration as the landlord had consented to the digging of wells and as he had forborne from claiming the *varam* rate, which he had a right to do under section 11, clause 3, of the Rent Recovery Act. There was no evidence that rent was chargeable according to the nature of the crop raised : *Held*, (i) that the word ' con-

MADRAS RENT RECOVERY ACT (VIII OF 1865)—*concld.*

——— s. 3—*concld*

tract' in section 11 cannot be construed as a mere agreement but as an enforceable contract supported by consideration, (ii) that the consent of the landlord not being necessary to entitle the tenant to sink the well, such consent was no legal consideration for an agreement to pay the enhanced rate; (iii) that payment of a fixed rate of rent prior to the sinking of the wells was evidence of an implied contract to pay rent at that rate, and in the absence of evidence to show that the rate was fixed not on the holding but on the nature of the crop and was liable to be altered with a variation in the crop raised; that the existence of such a contract debarred the landlord's claim to *varam* rates under section 11, clause 3, of the Rent Recovery Act The promise not to press such an unenforceable claim was no legal consideration ARUMUGAM CHETTY *v.* RAJA JAGAVEERA RAMA VENKATESWARA ETTAPPA MAHARAJA AIYAR (1910) **I. L. R. 35 Mad. 134**

——— s 7—*Distraint for larger amount than is legally due not good even for the amount due.* Where, after tender by landlord and refusal by the tenant of a patta providing for a larger rent than is really due, the landlord distrains property of the tenant for such larger amount, such distraint will not hold good even for the amount properly claimable. VENKATA NARASIMHA NAIDU BAHADUR *v* SAGGA S MAYYA (1911) **I. L. R. 35 Mad. 139**

MADRAS REVENUE RECOVERY ACT (II OF 1864).

——— ss. 3 to 5, 26—

——— *Defaulter, who is—Registered-proprietor is "defaulter" in respect of arrears accrued before registry.* The Madras Revenue Recovery Act lays the obligation to pay the revenue including all the arrears on every land holder irrespective of the time when he becomes the holder and if he does not do so, he becomes a defaulter A person, on being registered as the holder, becomes a defaulter in respect of arrears accrued before the registry, as if he were the registered owner when the arrears fell due KOTA SUBBAYA KUPTA GARU *v* THE SECRETARY OF STATE FOR INDIA (1912) . **I. L. R. 35 Mad. 555**

MADRAS WATER-CESS ACT (VII OF 1865).

——— *Levy of cess, what is—Effect of levy not retrospective—"Arrears" in s 2 of the Act means payments which become due and remain unpaid after levy.* Under Madras Act VII of 1865, Government have the right to levy at pleasure a separate cess for water. The liability to pay water-cess is not incurred in each fasli by the mere fact of taking Government water but only when Government indicates its intention to charge the cess. The cess must be imposed during the fasli

MADRAS WATER-CESS ACT (VII OF 1865)—*concld.*

"Arrears" in section 2 of the Act means payments which have become due and remain unpaid after the levy was made An "arrear" under the Act presupposes an engagement to pay and the mere use of water implies no such engagement. The Government cannot by the mere act of levying water-cess in a subsequent fasli indicate an intention to claim rent for previous fasli RAMACHANDRA APPA ROW *v.* SECRETARY OF STATE FOR INDIA (1911) . **I. L. R. 35 Mad. 197**

MAGISTRATE.

See JURISDICTION OF CRIMINAL COURTS.

See JURISDICTION OF MAGISTRATES

See MAGISTRATE, JURISDICTION OF.

——— jurisdiction of—

See HABEAS CORPUS **I. L. R. 39 Calc. 164**

MAGISTRATE, JURISDICTION OF.

1 ——— *Criminal Procedure Code (Act V of 1898), ss. 100, 552—Jurisdiction of first class Magistrate, upon an application under s 552 of the Code, to issue a search warrant under s 100 on a fresh complaint of facts alleging wrongful confinement—Warrant under s 100 drawn up on a printed form used under s 98, with the necessary alterations—Presumption that such alterations were made—Destruction of original warrant by the accused—Resistance to execution of such warrant and assault on the police—Penal Code (Act XLV of 1860), ss. 147 and 332* Where, on an application made under s. 552 of the Criminal Procedure Code, to a Magistrate of the first class, he examined the applicant on oath, recorded a statement of facts alleging wrongful detention of his wife, and directed the issue of a search-warrant under s. 100. *Held*, that he had jurisdiction to do so A search-warrant under s. 100 of the Code, drawn up, in the absence of a printed form of warrant there under, on a printed form used under s 98, with the necessary alterations, is not illegal *Bisu Haldar* v. *Probhat Chunder Chuckerbutty, 6 C L. J. 127*, distinguished. Where the original warrant was in such a case not produced at the trial owing to its destruction by the accused at the time of its execution: *Held*, that it must be taken that it contained the substance of s 100, and that the necessary alterations were made. GORA MIAN *v* ABDUL MAJID (1911) **I. L. R. 39 Calc. 403**

2 ——— *Deputy Magistrate in charge of the office of the District Magistrate at head-quarters—Subordination of the Sub-divisional Magistrate to such Deputy Magistrate—Power of latter after taking cognizance and examining the complainant on oath to direct a local investigation by the former—Irregularity, effect of—Power of the same to dismiss the complaint, and order the prosecution of the complainant, on evidence taken at the investigation and on the report of the Sub-divisional Officer—*

MAGISTRATE, JURISDICTION OF— *concld.*

Criminal Procedure Code (Act V of 1898), ss. 12, 202, 203, 476 and 529 (f) A Sub-divisional Magistrate is not, under s. 202 of the Criminal Procedure Code, subordinate to a Deputy Magistrate appointed to act in the district, without definition of the local limits of his jurisdiction, who was in charge of the office of the District Magistrate at headquarters during the latter's absence on tour, and such Deputy Magistrate cannot, therefore, after taking cognizance of an offence committed in the sub-division, and examining the complainant on oath, direct a local investigation by the Sub-divisional Magistrate, nor can he thereafter dismiss the complaint, and order the prosecution of the complainant under s. 476 of the Code on such report, and the evidence taken at the investigation. Section 529 (*f*) does not, in the circumstances, confer jurisdiction on the Deputy Magistrate, to make such orders of dismissal and prosecution, but vests the Sub-divisional Magistrate with seisin of the case, and the latter alone can inquire into it, and pass final orders BHIKU HOSSEIN *v* EMPEROR (1912) **I. L. R. 39 Calc. 1041**

MAHOMEDAN LAW—

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See PRE-EMPTION **I. L. R. 34 All. 153**

MAHOMEDAN LAW—ADOPTION.

See CUSTOM **I. L. R. 39 Calc. 418**

MAHOMEDAN LAW—ALIENATION

——————— *Guardian—Construction of will—Alienation of property of minor by his brother acting as executors of will and guardians of minor—Sale not binding on minor—Right of suit to redeem mortgage—Limitation Act (XV of 1877) Schedule II, Articles 44 and 144.* A Mahomedan testator by his will left all his property to his four grandsons (brothers), but did not expressly appoint any executors of his will or guardians of such of his grand-children as might be minors at his death, nor was there in the will any intention to entrust the administration of the property to any particular individuals The testator died in 1887: and on the 15th of June 1889 the three elder grandsons on their own behalf and purporting to act also as the guardians of the fourth grandson, the respondent (plaintiff) then a minor, sold some of the property to the appellant (defendant) The appellant was a mortgagee of two villages on the estate under two mortgages executed by the testator on the 2nd of December 1885, and the 7th of August 1886, for ten years and seven years respectively; and the effect of the sale had been to pay off the later mortgage on the smaller village, and other debts, by selling the larger village to the mortgagee The respondent attained his majority in 1892 or 1893, and treating the sale of the 15th of June 1889, as a nullity, and the mortgage as still subsisting, he tendered to the appellant the amount of mortgage money necessary to redeem the larger village, and on the appellant refusing to accept it, brought a suit for redemption on the 14th of September, 1905 *Held*, that the elder brothers were not authorized either by the will or by the Mahomedan law to act as guardians of the minor, and that he was entitled on attaining his majority to treat the transaction of the 15th of June, 1889, as being void as against him. *Held*, also, that the possession of the appellant did not become adverse to the respondent until the expiry of the term of the mortgage of 1885, namely, the 2nd of December, 1895, and therefore the suit was not barred by the 12 years' period provided by Article 144 of Schedule II of the Limitation Act (XV of 1877) Article 44, Schedule II, of the same Act was not applicable, as the sale was made not by a guardian but by an unauthorized person. MATA DIN *v* AHMAD ALI (1912) . . . . **I. L. R. 34 All. 213**

MAHOMEDAN LAW—BIGAMY.

——————— *Effect of apostacy of husband after marriage, and reconversion to Islam during the period of iddut—Second marriage of the wife with another man during such period—Abetment—Penal Code (Act XLV of 1860), ss 494 and* $\frac{494}{109}$. Under the Mahomedan law the marriage of a man, who subsequently embraces Christianity, becomes *ipso facto* void, notwithstanding his reconversion to Islam during the period of *iddut*, and the wife, in contracting a second marriage during such period, does not commit bigamy under s 494 of the Penal Code *Per* HOLMWOOD, *J.*—A second marriage contracted by the wife during the period of her *iddut* is not void by reason of its taking place during the life of the first husband, but by reason of a special doctrine of the Mahomedan law with which the Penal Code has nothing to do Where the parties have acted in good faith or what they believe to be a sound interpretation of a very difficult point of Mahomedan law, even though they are mistaken, the consequences cannot be visited upon them in a Criminal Court in a trial for bigamy ABDUL GHANI *v* AZIZUL HUQ (1911) **I. L. R. 39 Calc. 409**

MAHOMEDAN LAW—ENDOWMENT.

See MAHOMEDAN LAW-WAKF

1 ——— **Agreement by Hindu to dedicate property for maintenance of mosque—**

MAHOMEDAN LAW—ENDOWMENT—*concld.*

Mahomedan Law—Validity—Agreement interfering with work of Receiver. An agreement by a Hindu to dedicate property for maintenance of a mosque is not enforcible according to Mahomedan Law. FUZLUR RAHAMAN *v.* ANATH BANDHU PAL (1911) **16 C. W. N. 114**

2 ——— **Khanga attached to Darga**—*Religious institution—Right of management—Exclusion of females—Prevailing usage—Usage as indication of the direction of the founder* The right of management of a religious institution such as Khangas attached to Dargas is to be decided according to the prevailing usage, that usage being taken as indication of the direction of the founder. Even in cases where appointments have been regularly made by the last holders an inquiry into the usage governing such appointments has been considered relevant *Shah Gulam Rahumtulla Sahib* v. *Mahommed Akbar Sahib, 8 Mad. H C. 63, Sayad Abdula Edrus* v *Sayad Zain Sayad Hasan Edrus, I L R. 13 Bom. 555, Sayad Muhammad* v *Fatte Muhammad, L R 22 I A. 4,* referred to. ISMAILMIYA *v.* WAHADANI BEGAM (1911) **I L R. 36 Bom. 308**

MAHOMEDAN LAW—GIFT.

1. ——— **Offerings at a shrine**—*Gift of a fixed share of offerings made at a shrine—Possession of subject of gift. Held,* that a gift of the right to receive a certain share of the offerings which might be made at a particular shrine was a valid gift and not repugnant to the doctrines of the Mahomedan Law. *Amtul Nissa Begam* v *Mir Nurudin Husain Khan, I L R. 22 Bom 489,* distinguished AHMAD-UDDIN *v* ILAHI BAKHSH (1912) **I. L. R. 34 All. 465**

2. ——— **Hanafi law**—*Gift—Construction of document—Condition in derogation of the grant invalid.* A deed of gift of certain property provided as follows:—'My son, Naki Khan, will remain owner (*malik*) of the remaining two-thirds and of the said two-thirds Naki Khan will remain full and absolute owner of one-third (*malik kamil katai*), and he shall have the powers of an owner with respect to it, and Naki Khan will be owner (*malik*) of the other third also, and his name will be entered in the khewat, but the income of it is given for the maintenance of my minor grandson, Muhammad Shafi Khan, son of Muhammad Taqi Khan, deceased. According to law, Naki Khan is guardian of Shafi Khan, he must give the income of that one-third for the maintenance of the minor and Naki Khan will not have the power of transfer over that one-third during the life of the minor." *Held,* on a construction of the deed, that the condition against alienation was invalid; but the condition as to the payment of one-third of the income to Muhammad Shafi Khan was valid and attached to the property in the hands of a transferee who was found to have notice thereof. *Nawab Umjad Ally Khan* v. *Musammat Mohumdee Begum, II Moo I. A 517.*

MAHOMEDAN LAW—GIFT—*concld*

followed LALI JAN *v.* MUHAMMAD SHAFI KHAN (1912) . . . . **I. L. R. 34 All 478**

3 ——— **Possession**—*Gift, validity of—Transfer of possession when unnecessary—Possession of donor necessary to validate gift* To make a valid gift under Mahomedan law the donee should be put in possession But where the donee is a minor at the time of the gift and the donor remains in possession of the property as guardian of the donee on his behalf, the gift would be valid under Mahomedan law unless the subject-matter of a gift is in the possession of a trustee or agent of the donor whose custody is regarded in law as the custody of the donor. The owner of a property, if not in possession, cannot make a valid gift of it or rather a gift made by him, will not pass the ownership of the property to the donee until the donee takes possession by the donor's consent FAKIR NYNAR MUHAMED ROWTHER v KANDASAWAMY KULATHU VANDAN (1911) **I L. R. 35 Mad. 120**

MAHOMEDAN LAW—PRE-EMPTION.

1. ——— **Hindus in Bihar**—*Pre-emption—Customary right—Right of pre-emption—Co-sharers—Assertion of right of pre-emption, delay in making—Power to perform ceremonies of assertion—Manager appointed by Court of Wards of estate of "disqualified proprietor" under the Court of Wards Act (Ben. Act IX of 1879)—Powers and duties of manager under section 40 of Act—Basis of right of pre-emption among co-sharers in undivided mahal—Sanction of Court of Wards.* The Mahomedan law of pre-emption has long been judicially recognised as existing among the Hindus in Bihar, to which the district of Champaran appertains. *Fakir Rawot* v. *Emambaksh, B. L. R. Sup. Vol. 35; W. R. F. B. 143,* followed. In a suit for pre-emption in respect of certain undivided shares in a number of villages comprised in a mahal, the estate of the plaintiff was in charge of the Court of Wards as that of a "disqualified proprietor" under Bengal Act IX of 1879, section 40 of which provides that the manager "shall manage the property . . . diligently and faithfully for the benefit of the proprietor, and shall in every case act to the best of his judgment for the ward's interest, as if the property were his own · *Held,* that the manager appointed by the Court of Wards was independently of the provisions of section of the Court of Wards Act, competent, on behalf of the plaintiff, to perform the preliminaries essential to the assertion of the right to pre-emption though if, in that case, the validity of his action depended on the sanction of the Court of Wards, their Lordships were of opinion that section 40 gave him full authority to act as he had done; and in that view the adoption of his acts by the Court of Wards became unnecessary A "mahal" is a unit of property, and though all the villages of which it consists may be separately assessed for revenue purposes, and each of the sharers may not have an interest in them all, the shares are all co-

MAHOMEDAN LAW—PRE-EMPTION —*concld.*

sharers in the whole mahal, and jointly liable for the Government revenue Each co-sharer, therefore, has a right of pre-emption against the other in respect of any part of the mahal sold by any of them to a stranger After partition by the Revenue authorities, each share so partitioned becomes a unit of property JADU LAL SAHU *v* JANKI KOER (1912) . **I. L. R. 39 Calc. 915**

2. ——— **Survival of the action to executors and administrators on the pre-emptor's death**—*Personal action—Probate and Administration Act (V of 1881), s 89—Actio personalis moritur cum persona* The right of pre-emption under Mahomedan Law does not abate at the pre-emptor's death; but survives to his executors and administrators under section 89 of the Probate and Administration Act (V of 1881) SAYYAD JIAUL HUSSAN *v* SITARAM BHAU (1911) **I. L. R. 36 Bom. 144**

MAHOMEDAN LAW—SUCCESSION.

See KUNJPURA, STATE OF **I. L. R. 39 Calc. 711**

MAHOMEDAN LAW—TRUST.

——— *Khoja Mahomedans—Settlement—Settlor himself trustee—No delivery of possession—Son born after Settlement—Power of Settlor to revoke settlement—Settlor's intention not carried out owing to Settlor's death—Power of Court to aid defective execution—Suit by after-born son to set aside settlement—Limitation Act (IX of 1908), s 10—Resulting trust back to Settlor—Adverse possession—Difference between estoppel and res judicata—Validity of Wakf contained in deed containing other gifts—Local usage cannot override Mahomedan Law—Registration—Vis Major.* By an Indenture of settlemnt dated 7th January, 1886, J. P., a Khoja Mahomedan, purported to convey certain immoveable properties to trustees for the benefit of his family The trusts were in effect for J. P for life and after his death, subject to certain rights of residence and maintenance to pay the net income of the trust properties to N M for his life and in the event (which subsequently occurred) of the death of N. M without leaving male issue, to divide the trust funds into ten equal parts to be held in favour of certain donees, four-tenths being given to charity The Indenture also reserved to the settlor power to revoke or vary any of the trusts contained therein There was no surrender of the property in fact to anyone except J P. himself in his character as trustee for himself. The donor, however, opened an account in his books of this property as trust property On the 26th October, 1886, a second son, the plaintiff, was born to J. P, whereupon J P being desirous of providing for this second son, desired to vary the terms of the deed of the 7th of January, 1886 and to re-settle the same so that his two sons should share equally. A draft deed of declaration of new trusts was accordingly prepared by J P 's attorneys and

MAHOMEDAN LAW—TRUST—*contd,*

on the 24th of July, 1887, was finally settled and approved by J P. An engrossment was thereupon made and duly stamped, but on taking the engrossment to J P for his execution on July 29th it was found that owing to an error of the engrossing clerk several pages of it were missing. Another engrossment was prepared forthwith, but on the same day before the new engrossment was ready J P died The plaintiff thereupon brought a suit to have it declared whether or not the deed of 1886 was a valid deed and prayed that the defective execution of the second deed might be aided by the Court and the provisions of the said second deed declared to be valid *Held*, (i) That the plaintiff was not time-barred as against the trustees from bringing the action (ii) That however restricted the gift was in form to J P it was in effect a gift absolute to him for life, and that entirely irrespective of the power of revocation (iii) That all the gifts in the trust settlement made contingent upon N M dying without issue were bad (iv) That that portion of the instrument which purported to create a *wakf* in respect of four-tenths of the settled property was bad and void (v) That the gift was bad for want of contemporaneous delivery of possession. (vi) That this was a case, if ever there was a case, in which the Courts might act upon those principles which have always guided the Court of Equity in England and aid defective execution of a power, defective not through any fault on the part of the person intending to execute it but by reason of an act of God, and that the unsigned deed ought to be effectuated by the Court to the extent of making it binding on the conscience of the trustees *Per Curiam* It is only in the event of the trusts or some of them being bad that the question of limitation can arise For if a trust-deed in its entirety is good, then of course effect must be given to it irrespective of any question of lapse of time Where what purports to be a trust-deed turns out to have been entirely void and therefore not to have passed the legal estate, the position of those who took possession believing themselves to be trustees but not in law real trustees, necessarily assumes the character of possession by trespass and is therefore from its inception in law adverse against all the world Where, however, the trust-deed in itself is good and valid to the extent of passing the legal estate but the trusts declared are in themselves wholly or partially bad, then there is a resultant trust to the author of the trust and the possession of the trustees, whatever they might think of it and however they might intend to use it for the purpose of carrying out of the bad trusts, could not in law be adverse to the *cestui-que-trust*, that is to say, the grantor. Widely different is the case of trustees who obtain the legal estate from the author of the trusts to apply the beneficial uses to specified objects which may or may not be good For then from the beginning there is always a relation between the author of the trusts and the trustees in whom his confidence has been reposed and there is always the legal possibility at least of another relation coming into existence

MAHOMEDAN LAW—TRUST—*contd.*

between them where owing to the failure of the declared trusts, there is a resultant trust back to the grantor who from that moment becomes in law the *cestui-que-trust* of the trustees Where it was the intention that there should be an ultimate trust in favour of the grantor it is usual to express that on the face of the deed A deed so framed as upon its very face to provide for the springing back of the trust fund or a part of it in certain events to the author of the trust, does create what is at once an express and resultant trust The current of authority seems to have set steadily against the extension of section 10 of the Limitation Act to all cases of resultant implied or constructive trusts Where the ultimate resultant trust which is to spring back to the settlor is consistent with the discharge of the declared trust, then it may by loose use of language be said to be express on the face of the deed, but when the extinction or failure of all the intended trusts is a condition precedent to the resultant trusts coming into being, then the latter is clearly a true resultant trust and is not express and never can be express on the face of the deed. The answer to the question—What is the true position when declared trusts failed and there is a resultant trust over to the settlor or his heirs—is to be found in the very elementary proposition that the possession of the trustee is always that of *cestui-que-trust*, and, therefore, however, he may think or wish to be holding as trustee for trusts which have failed in the eye of the law, he is really holding, when those trusts failed, as trustee for the settlor. Then the position is simply this : so long as he retains and professes to retain the character of a good and legal trustee, he is holding the legal estate as stake-holder for two claimants, the intended beneficiaries of the declared trusts which have failed, and the resultant trustee, that is, the settlor. And no length of possession by a trustee can be adverse to his *cestui-que-trust* as soon as that legal person is discovered and ascertained So long as a trustee occupies the position of a trustee as soon as declared trusts failed and there is a resultant trust in favour of the settlor, the trustee's possession is essentially that of his *cestui-que-trust* and can only be changed into adverse possession by a conscious and deliberate act ; that is to say, that he must repudiate all intention of holding for the resultant *cestui-que-trust* and he must assert his intention of continuing to apply the trust fund to uses which the Court has declared or which are known to him to have failed. Then his possession might become adverse to his legal *cestui-que-trust* and if that person did not take steps within twelve years he might not be able to avail himself, under the Indian authorities, of the provisions of section 10 of the Limitation Act Estoppel and *res judicata* are entirely distinct. *Res judicata* precludes a man averring the same thing twice over in successive litigations, while estoppel prevents him saying one thing at one time and the opposite at another. It is consistent with the Mahomedan Law that a Mahomedan may devote his property in *wakf* and yet reserve to himself and his descendants in a very

MAHOMEDAN LAW—TRUST—*contd.*

indefinite manner the usufruct of property. *Jamabai* v. *R.D Sethna, I. L R. 34 Bom 604,* considered. The power of revocation is inherent in the donor of every gift, so that expressing it, as is usually done by English draftsmen in these voluntary settlements, is merely surplusage and so far from invalidating the gift as a whole would necessarily be implied in it were it not expressed Under the Mahomedan Law where a gift is conditioned by a power restricting alienation, the gift is absolute and the condition is void A gift to the donor himself for his life and then over to others could not be reconciled with any recognised principle of the Mahomedan Law of gift and must necessarily therefore, so far as the remoter donees are concerned, be had *ab initio* *Jamabai* v *R. D. Sethna, I. L. R. 34 Bom. 604,* followed A vested remainder in the strictest sense of the English words and *a fortiori* a contingent remainder could not possibly by any stretch of ingenuity be made the subject of a valid Mahomedan gift *inter vivos* consistently with the requirements of the Mahomedan Law on that head and for this very simple reason that no man can give possession *in præsenti* of that which may never come into possession at all. It is of the essence of a Mahomedan gift *inter vivos* that the donor should divest himself of the actual possession of the thing given and transfer it to the donee and if the donee does not take physical possession of it at the time of making the gift, then till he does, the gift is revocable. There is no authority to be found anywhere in the Mahomedan Law books themselves for the proposition that a man giving *inter vivos* may give an estate first to himself and then to *A* for life and then to *B* absolutely. It is undoubtedly a rule of the Mahomedan Law that where a donor makes a gift and accepts in exchange something whether that something be independent of or part of the original gift, then the rest of the gift is irrevocable. No gift *in futuro* can be made by a Mahomedan *inter vivos*, in order to validate such a gift there must be an actual delivery of seisin to the donee, there must be a transfer of possession and that transfer of possession must be from the donor to the donee. While the Mahomedan Law insists that a gift to private persons should be free of all pious and religious purposes, this does not necessarily prohibit the making of the gift to *wakf* which may be contained in a deed which makes other gifts at the same time to private persons It appears to be the Mahomedan Law that a donor may give his property in *wakf*, that is to say, appropriate and dedicate the *corpus* to the service of God, while reserving for himself a life interest in the usufruct. But as in the case of gifts to private individuals the Mahomedan Law never contemplated and will not allow a merely contingent gift in *wakf*. This necessarily flows from the jural conception of a *wakf* which is the immediate appropriation and consecration of specified property to the service of God and the reservation of the donor's life interest in that property does not in any way clash with that conception for the *corpus* is there and

MAHOMEDAN LAW—TRUST—*concld.*

then definitely and finally appropriated to its intended purpose. But it is plainly otherwise, while the gift is conditioned upon the happening of some future uncertain events There can, in such circumstances, be no appropriation synchronizing with the declaration, because should the future events happen it is neither the donor's intention then nor after the happening of that event that the property ever should be appropriated to the service of God. It would be passing the limits of the application of the maxim " *Usus et conventio vincunt legem* " if it were sought to be shown that the Khojas are allowed by local usage to override the Mahomedan Law which prohibits any Moslem from disposing of more than one-third of his property by will CASSAMALLY JAIRAJBHAI *v* SIR CURRIMBHOY EBRAHIM (1911).

I. L. R. 36 Bom. 214

MAHOMEDAN LAW—WAKF.

See MAHOMEDAN LAW—ENDOWMENT.

——— *Wakf—Nature of, according to Sunni schools—Injunction between co-owners—Mahomedan burial-grounds, joint interests in.* The Court will refuse to a co-owner an injunction to prevent the carrying out of a necessary work by another co-owner upon property held in common According to the accepted view of the Sunni schools which comprise the followers both of Imam Abu Hanifa and Imam Shafei it is in the very conception of *wakf*, which is the name for a grant by which mosques and similar institutions are dedicated, that all proprietary rights of men should be extinguished in the property so dedicated KUTTAYAN *v.* MAMMANNA RAVUTHAN (1912) . . . **I. L. R. 35 Mad. 681**

MAHOMEDAN LAW—WILL.

——— *Limitation Act (XV of 1887), Art. 123—Suit to recover legacy—Legacy not assented to by executor—Probate and Administration Act (V of 1881), s. 112—Shiahs—Wakf—Bequest for Gadi-ul-khum feast—Fattiah dinners—Valid bequest—Cypres* Article 123 of the Second Schedule of the Limitation Act, 1877, applies to a suit where the substantial claim is to recover a legacy, even though not assented to by the executor and whether or no the suit involves the administration of the whole estate A Shiah Mahomedan directed his executors by his will to spend a portion of the income of his property upon the following charitable or religious objects : (i) The Gadi-ul-khum feast at Mecca ; (ii) The Gadi feast at Rehmanpura in Surat ; and (iii) A Fattiah dinner on the testator's and his wife's account. The Gadi feasts were to celebrate the appointment of Ali as successor of the Prophet *Held*, that the first two bequests were valid, but the validity of the third bequest was doubtful *Kaleloola Sahib* v. *Nuseeruddeen Sahib, I L. R. 18 Mad 201, Zooleka Bibi* v. *Zynul Abedin, 6 Bom L. R 1058*, and *Biba Jan* v *Kalb Hussain, I. L R 31 All 136*, followed. Where the testator has indicated a general charitable intention in the bequest made by him and if these bequests fail, the Court can devote the property to religious or charitable purposes according to the *cypres* doctrine SALEBHAI ABDUL KADER *v* BAI SAFIABU (1911). **I. L. R. 36 Bom 111**

MAHOMEDAN LAW—WILL—*concld.*

MAIDEN'S STRIDHAN

See HINDU LAW—SUCCESSION.

I. L. R. 39 Calc. 319

MAINTENANCE.

See HINDU LAW—MAINTENANCE.

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I. L. R 36 Bom. 131

MAJORITY ACT (IX OF 1875).

——— **s. 3.**

See HINDU LAW—MINOR.

I. L. R. 36 Bom. 622

" MAJUR. "

See INSURANCE **I. L. R. 36 Bom. 484**

MALABAR (COMPENSATION FOR) TENANTS' IMPROVEMENT ACT (MAD. I OF 1900).

See MARUMAKATTAYAM LAW.

I. L. R. 35 Mad. 648

MALICE.

——— **charge of—**

See TRESPASS—SEARCH FOR ARMS.

I. L. R. 39 Calc. 953

MALIKANA OR DASTURAT.

See SETTLEMENT, CONSTRUCTION OF.

I. L. R. 39 Calc. 1

MAMLATDAR'S COURTS ACT, BOMBAY (BOM. II OF 1906).

——— **s. 23.**—*Possessory suit—Collector's powers to revise—The powers can be exercised by Assistant Collector in charge of the district—Land Revenue Code (Bom Act V of 1879), s. 10.* An Assistant Collector, who is placed in charge of portions of a district under section 10 of the Bombay Land Revenue Code (Bombay Act V of 1879), has the power to exercise all the powers conferred upon the Collector by section 23 of the Bombay Mamlatdars' Courts Act (Bombay Act II of 1906). KESHAV *v.* JAIRAM (1911)

I. L. R. 36 Bom. 123

MANAGEMENT.

See MAHOMEDAN LAW—ENDOWMENT.

I. L. R. 36 Bom. 308

MANAGER.

See IDOL . **I. L. R. 36 Bom. 135**

——— **alienation by—**

See HINDU LAW—ALIENATION

I L. R. 35 Mad. 177

MANAGER UNDER COURT OF WARDS.

See MAHOMEDAN LAW—PRE-EMPTION
I. L. R. 39 Calc 915

MANAGING AGENT.

See MORTGAGE . **I. L. R. 39 Calc. 810**

MANDADARI TENURE.

——— *Nature of such tenure—Land held under it not transferable—Occupancy holding. Held*, that land held under what is known, in Gorakhpur chiefly, as a *mandadari* tenure is nothing more than an occupancy holding and is not therefore transferable. Such land cannot therefore be sold in execution of a decree upon a mortgage thereof. KEDAR NATH KASONDHAN *v* NAIPAL SINGH (1911) . **I. L. R. 34 All. 155**

MANDAMUS.

See MUNICIPAL ELECTION.
I. L. R. 39 Calc. 598

MANUFACTURE, SALE OR POSSESSION.

See EXCISEABLE ARTICLES.
I. L. R. 39 Calc. 1053

MARINE INSURANCE.

See INSURANCE . **16 C. W. N. 991**
I. L. R. 36 Bom. 484

MARRIAGE.

See BURMESE LAW.
I. L. R. 39 Calc. 492

See DIVORCE ACT (IV OF 1869), S. 57.
I. L. R. 34 All. 203

See MAHOMEDAN LAW—BIGAMY
I. L. R. 39 Calc. 409

See MARRIAGE WITH WIFE'S SISTER.

See PENAL CODE (ACT XLV OF 1860), S. 498 . **I. L. R. 34 All. 589**

MARRIAGE WITH WIFE'S SISTER.

See BURMESE LAW—MARRIAGE.
I. L. R. 39 Calc. 492

MARUMAKATTAYAM LAW.

——— *Gift to a woman and her children enures for their benefit with the incidents of tarwad property—Members subsequently born acquire an interest by birth—Karnavan, power of, to alienate—Right of one member of tarwad to erect buildings in tarwad property—Compensation, claim to, for demolition of building—Malabar Tenants' Improvement Act, s 5.* A gift to a woman governed by the Marumakattayam law and her children enures in favour of the donee and her children with the incidents of tarwad property As members of a tarwad acquire an interest in the tarwad property by birth, children born subsequent to the gift will acquire an interest in such property. A karnavan cannot make an alienation for such a long period as sixty years in the absence of special necessity or special benefit. Such an alienation cannot be held good for a portion of the term, *i.e.*, the usual period of twelve years, as it will have the effect of creating a new contract between the parties. Although in the case of ordinary co-parceneries, the Courts will not order the demolition of buildings erected by one co-parcener in joint property, unless some substantial injury is shown, the case will be different in the case of tarwad property. The members of the tarwad have not, like the members of an ordinary co-parcenery, the right of compulsory partition and it would not be fair or equitable to compel the karnavan to purchase the building erected by a junior member or to deprive the karnavan of possession of part of the property for ever The junior member cannot, therefore on general principles, resist recovery or demolition of the building. A lessee, whose lease is disputed and who is put on inquiry as to the real title of the lessor, before constructing buildings on the land leased cannot, after constructing buildings on a wrong view of the lessor's title, claim on eviction compensation for the buildings as a *bonâ fide* tenant under s. 5 of the Malabar Tenants' Improvements Act. KALLIANI AMMA *v.* GOVINDA MENON (1912) . . **I. L. R. 35 Mad. 648**

MARUMAKATTAYAM LAW—*concld.*

MASTER, LIABILITY OF.

——— **for acts of servant—**

See MASTER AND SERVANT.
I. L. R. 39 Calc. 344

MASTER AND SERVANT.

See ADULTERATION.
I. L. R. 39 Calc. 682

See OPIUM ACT (I OF 1878), SS. 5, 9.
I. L. R. 34 All. 319

——— *Ganja—Illegal possession of ganja by servant acting on his own behalf and beyond the scope of his employment—Liability of the master for the act of the servant—Bengal Excise Act (Beng V of 1909), ss 46(a) and 56* To support a conviction under s. 56 of the Bengal Excise Act, it is necessary to show not only that a servant was in the employ of the master, but also that he was acting within the scope of his employment and for the benefit of the latter. Where a servant, whose duty was to remain at his master's shop and to conduct the business there, was found travelling to another place with *ganja* in his possession, in contravention of s. 46 (*a*) of the Act : *Held*, that the master could not be convicted under s 56, as his servant acted beyond the scope of his employment and for his own private purpose *Sufer Ali Khan* v *Golam Hyder Khan*, *6 W R. Cr. 60*, referred to. *Emperor* v. *Haji Shaik Mahomed Shustari, I. L. R. 32 Bom 10*, distinguished. UTTAM CHAND *v.* EMPEROR (1911)
I. L. R. 39 Calc. 344

MAYUKHA.

See HINDU LAW—PARTITION.
I. L. R. 36 Bom. 379

See HINDU LAW—STRIDHAN.
I L. R. 36 Bom. 424

MEASURE OF RIGHT.
See EASEMENT . I. L R 39 Calc. 59

MEMORANDUM OF APPEAL
See COURT-FEE. I. L. R. 39 Calc. 906

MERCHANT SHIPPING ACT (57 & 58 VICT., C. 60).

——— ss. 684, 686.
See HIGH COURT, JURISDICTION OF
I. L. R. 39 Calc. 487

MESNE PROFITS.

——— *Execution of decree—Immovable property, suit for—Purchaser pendente lite, whether legal representative of the original owner—Civil Procedure Code (Act V of 1908), OO. XX, r. 12(2); XXI, r 102, and XXII, r 10, and s. 2(11).* Proceedings for the assessment of mesne profits, after a decree had been obtained in a suit for recovery of possession of immovable property, are proceedings in continuation of the original suit. A suit for recovery of possession of immovable property was brought against *A*. During the pendency of the suit, *B* and *C* purchased the property from *A*, but they did not apply to have their names added as defendants in the pending suit. The suit having been decreed, the decree-holder applied for execution of the decree against *A*, *B* and *C* and asked for possession of land and for the assessment of mesne profits. On an objection taken by *B* and *C* that they were not the legal representatives of *A* and that they could not be made liable in execution-proceedings for the mesne profits decreed against *A*: *Held*, that, although *B* and *C* were not the legal representatives of *A*, the execution-proceedings being proceedings in continuation of the original suit, and they being purchasers *pendente lite*, they were liable for the mesne profits decreed against *A*. MIDNAPORE ZEMINDARI COMPANY, LD. *v.* NARESH NARAIN ROY (1911)
I. L. R. 39 Calc. 220

2. ——— *Mesne profits.* Although a plaintiff may perhaps recover mesne profits though out of possession still in order to recover damages in a case where he was out of possession, the plaintiff must show that he has a right to immediate possession. ELAHI BUKSH MANDAL *v.* RAM NARAYAN GHOSH (1911)
16 C. W. N. 288

MINERAL RIGHTS.

See LANDLORD AND TENANT.
I. L. R. 39 Calc. 696

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See CIVIL PROCEDURE CODE, 1882, SS 13, 462 . . I. L. R. 36 Bom. 53

MINOR—*concld.*

See CIVIL PROCEDURE CODE, 1908, S. 48
I. L. R. 36 Bom. 498

See EXECUTION OF DECREE
I. L. R. 34 All. 321

See HINDU LAW—MINOR.
I. L R. 36 Bom. 622

See SPECIFIC PERFORMANCE
I. L. R. 39 Calc. 232

——— contract by, to purchase immovable property.

See SPECIFIC PERFORMANCE
I L. R. 39 Calc. 232

——— *Mortgage executed by minor—Money borrowed to discharge debts of father—Contract executed by minor, effect of.* In this appeal, which was one from the decision of the High Court in *Maharaj Singh* v. *Balwant Singh, I L R 28 All 508*, their Lordships of the Judicial Committee, on the evidence, upheld that decision on the question whether the defendant Maharaj was a minor at the time he signed the mortgage, and said: "Having found as a fact that Maharaj Singh was a minor," at that time, "it is not necessary for their Lordships to consider any other issues. This suit has been brought on the mortgage deed of the 28th of October, 1892, by the assignee of that mortgage, and as their Lordships have held that the mortgage was not made by Sheoraj Singh as the manager of the family or in any respect as representing Maharaj Singh, and as Maharaj Singh was then a minor, the mortgage-deed as against him and his interest in the estate was not merely voidable, it was void and of no effect and must be regarded as a mortgage-deed to which he was not even an assenting party, and as a mortgage-deed which did not affect him or his interest in the estate." BALWANT SINGH *v.* R. CLANCY (1912)
I. L. R. 34 All. 296

MISCHIEF.

See NORTHERN INDIA CANAL AND DRAINAGE ACT (VIII OF 1873), SS. 7, 70 . . I. L. R. 34 All. 210

——— *Intention—Motive—Cutting a channel through railway to let out water from fields.* Where tenants, finding their fields flooded, cut a channel through a railway in order to let the water run off their fields: *Held*, that the act having been intentionally done amounted to mischief, and it was no defence to say that their motive in doing it, *viz*, to free their fields from water, was an innocent one. DEPUTY SUPERINTENDENT OF LEGAL AFFAIRS *v.* CHULHAN AHIR (1908) . . . . 16 C. W. N. 263

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See LEGAL PRACTITIONER
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——— of servant or agent—

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I. L. R. 39 Calc. 1053

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See HINDU LAW—FATHER'S DEBT
I L. R 39 Calc. 862

See HINDU LAW—LEGAL NECESSITY
I. L. R. 34 All. 4

See HINDU LAW—PARTITION
I. L. R. 34. All. 505

See HINDU LAW—STRIDHAN
I. L R. 36 Bom. 424

See HINDU LAW—SUCCESSION.
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I. L. R. 35 Mad. 152

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See DIGWARI TENURE.
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MORTGAGE.

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See TRUSTS ACT, S. 5.
I. L. R 36 Bom. 396

1 CONSTRUCTION OF DOCUMENT.

1. ——— *Construction of document—"Muakhza"—Transfer of Property Act (IV of 1882), ss. 58, 100.* A deed the basis of a suit for sale as on a mortgage opened with a recital that the executant had borrowed a sum of money, followed by a promise to pay the amount with interest at 2 per cent per month within a certain time, and then provided . "*muakhza asl o sud ta yom-ul-wasul upar* (description of the share) *haqiyat min muqr· · · · · qaim rahega · · ·lihaza· · · · · batarik tamassuk muakhza-i-jadad ka likhaya*" *Held*, that this deed could not be construed at as mortgage. The word *muakhza* did not necessarily imply a power of a sale, and there was nothing else in the deed from which an intention to give a power of a sale could be inferred DALIP SINGH *v* BAHADUR RAM (1912)
I. L. R. 34 All. 446

2 ——— *Validity of, when only part of the consideration paid—Mortgagee in possession cannot prescribe for higher interest by asserting a larger amount as due—Limitation Act, Sch II, Arts 144, 148* Where only a part of the consideration for a mortgage has been paid, the mortgage is a good security for the amount that has validly passed. The mortgagee by remaining in possession for more than 12 years under such a mortgage, cannot by merely claiming to hold for the full amount, acquire by prescription a right to hold as mortgagee, for such full amount. Notwithstanding the assertion by the mortgagee of a larger interest than was validly passed to him by the mortgage, article 148 of the LIMITATION ACT

MORTGAGE—*contd.*

1. CONSTRUCTION OF DOCUMENT—*concld.*

will apply to a suit for redemption by the mortgagor Article 144 will not apply as article 148 specially provides for the case RAJAI TIRUMAL RAJU *v* PANDLA MATHIAL NAIDU (1911) **I L R. 35 Mad. 114**

3. ——— *Mortgage.* Where a mortgage is executed but there is a collateral agreement that no obligation should attach under the instrument till payment of money on the one hand and delivery to the registering officer on the other, the moment the condition is fulfilled, obligation attaches with effect from the date of execution and attestation of the document There is no analogy between a common law deed in England and a mortgage-deed in this country in this respect. JADUNANDAN PROSAD SINGH *v* DEO NARAIN SINGH (1911) . **16 C. W. N. 612**

2. ESTOPPEL.

——— *Estoppel—Power of representatives of mortgagor to question validity of mortgage—Adverse possession—Possession adverse to mortgagor not necessarily adverse to mortgagee Held,* that, although the representatives of a mortgagor cannot as such question the validity of the mortgage, it may be open to them as *mutawallis* to plead that the property was wakf and that the mortgage of it was void *Gulzar Ali* v *Fida Ali, I L. R 6 All 24,* distinguished. *Held,* also, that a simple mortgage being not merely a security for a debt but a transfer of an interest in the property mortgaged, a trespasser who ousts the mortgagor and holds the property adversely to him may by prescription become the owner of the limited estate which the mortgagor had in the property, but such adverse possession cannot extinguish the right of the mortgagee. *Agency Company* v *Short, L. R. 13 A. C. 793, Smith* v. *Lloyd, 9 Ex 562, Secretary of State for India* v. *Krishnamoni Gupta, I. L. R. 29 Calc 518,* and *Ismdar Khan* v. *Ahmad Husain, I L. R. 30 All 119,* referred to *Ramaswami Chetty* v. *Ponna Padayachi, 21 Mad. L J. 397,* and *Pratap Bahadur Singh* v *Maheshwar Bakhsh Singh, 12 O. C. 45.* not approved *Ahmadar Mandal* v. *Makhan Lal Day, I L R 33 Calc 1015,* and *Parthasarathi Naikan* v *Lakshmana Naikan, 21 Mad L J., 467,* approved and followed. *Karan Singh* v *Bakar Ali Khan, I. L. R 5 All. 1,* discussed. NANDAN SINGH *v.* JUMMAN (1912) **I. L. R. 34 All. 640**

3 FORECLOSURE

1. ——— *Right to foreclosure and right to redeem, if co-extensive—Covenant to pay the mortgage money within a year, effect of.* Unless there is an agreement to the contrary, the right of foreclosure and the right of redemption must be deemed co-extensive In each particular instance, therefore, it must be determined upon the terms of the contract between the parties whether there is any special provision in the contract which takes the case out of the general rule Where the covenant in the mortgage-deed was that the mortgagor shall pay the amount of principal and interest within the term of one year : *Held,* that this clause was inserted for the benefit of the mortgagor so that he may be at liberty to pay the principal with interest before the expiry of the year. *Rose Ammal* v *Rajarathnam Ammal, I L R. 23 Mad. 33,* relied on. *Held,* further, that such a case falls within the class of cases in which the mortgage is payable before a certain day and not within the class where a day is fixed for the re-payment of the debt *Raghubar Dayal* v *Budhu Lal, I L R 8 All 95,* and *Brown* v. *Cole, 14 Sim. 427,* distinguished. PURNA CHANDRA SARMA *v* PEARY MOHAN PAL DAS (1912) **I. L. R. 39 Calc. 828**

MORTGAGE—*contd.*

3. FORECLOSURE—*concld.*

2 ——— *Decree in foreclosure—Suit against legal personal representative of widow—Res judicata—Suit for redemption by the widow's reversionary heir—Effect of decree on appeal on original decree—Decree of Appellate Court what it exactly should be—Civil Procedure Code (XIV of 1882), ss. 551, 577, 586.* Decree in a foreclosure suit which was instituted against the mortgagor, who was a widow, and which was wrongly continued in appeal by the legal personal representative of the widow, and in which the reversioner was no party, is no bar to a suit for redemption by the reversionary heir. Where there is a decree on appeal which confirms the decree against which the appeal is made, it is the appellate decree to which regard must be had. The appellate decree supersedes the original decree. *Noor Ali Chowdhury* v *Koni Meah, I L. R 13 Calc. 13,* followed. *Semble* The expression of law contained in s. 577 of the Code of Civil Procedure of 1882 as regards the proper course to be adopted in appellate decrees, *viz.,* that except when an appeal is incompetent as being out of time, or as coming within the provisions of s. 586, an appeal is not to be dismissed, but the judgment is to confirm, vary or reverse the decree against which the appeal is made, is still applicable. KAILASH CHANDRA BOSE *v.* GIRIJA SUNDARI DEBI (1912) **I. L. R. 39 Calc. 925**

4. MORTGAGE BY GUARDIAN.

4. ——— *Guardians and Wards Act (VIII of 1890), ss 29, 30—Mortgage by guardian without Judge's authority—Ward benefited—Suit to enforce mortgage—Minor's remedy—Restitution of benefit—Equitable obligation of defendant.* A mortgage of a minor's property executed by a certificated guardian without permission taken from the District Judge is voidable only. But it is not necessary that the person affected should sue to set aside the transaction, it is sufficient if he declares his will to rescind by way of defence in an action to enforce the mortgage against him Where it was found that the money raised by the mortgage was for the benefit of the

MORTGAGE—*contd.*

4. MORTGAGE BY GUARDIAN—*concld.*

minor the latter cannot avoid the mortgage without restoring the benefit which he had received under it, this equitable doctrine being applicable as well to a defendant in an action on the mortgage as to a plaintiff seeking to avoid the mortgage *The Eastern Mortage and Agency Co* v *Rebati Kumar Ray, 3 C. L J 260,* followed. HEM CHANDRA SARKAR *v* LALIT MOHON KAR (1912) **16 C. W. N. 715**

5. PRIORITY.

1. *Mortgage—Prior and subsequent incumbrancers—Third mortgagee paying off first mortgage and claiming priority as against second mortgagee—Presumption as to intention of third mortgagee.* Where a mortgagee pays off prior incumbrances on the mortgaged property, it is to be presumed that he does so with the intention of keeping these incumbrances alive and using them as a shield should occasion arise ; and he can so use them as much when he is a plaintiff suing for sale as when he is a defendant to an intermediate or subsequent mortgagee's suit If the payment is made in the form of leaving part of the money with the mortgagee to be paid to the prior mortgagees, the subsequent mortgagee does not thereby become the agent of the mortgagor for the purpose of paying off the prior mortgages *Gokaldas Gopaldas* v *Puranmal Premsukhdas, I L R 10 Calc. 1035, Dinobundhu Shaw Chowdhry* v *Jogmaya Dasi, I. L R 29 Calc 154,* and *Jagatdhar Narain Prasad* v *A M. Brown, I L. R. 33 Calc. 1133,* followed *Tufail Fatma* v *Bitola, I. L R. 27 All 400,* and *Baij Nath* v. *Murlidhar All W N. 1907, 85,* dissented from. GUR NARAIN *v.* SHADI LAL (1911) **I. L. R 34 All. 102**

2. ——— *Mortgage, right of person paying of prior—Cannot claim rights of prior mortgagee unless prior debt is completely satisfied.* Where there are two mortgages on a single property and a person advances money for the payment of the first mortgage, the claim of such person to priority over the second mortgage cannot be sustained unless the first mortgage is entirely discharged. HANUMANTHAIYAN *v* MEENATCHI NAIDU (1911) . **I. L. R. 35 Mad. 183**

3. ——— *Sale of mortgaged property—Prior mortgage, extinguishment of—Intention of parties —Effect of payment of prior mortgage by subsequent mortgagee—Res judicata—Omission to raise issue in former suit when party thereto—Civil Procedure Code (Act XIV of 1882), s. 13, expl (2) —Transfer of Property Act (IV of 1882), s 85—Parties to mortgage suits—Limitation Act, 1877, Sch. II, Art 132* In a suit brought on a simple mortgage-deed, dated 17th February, 1888, to recover Rs 12,000 and interest, and to have it declared that the properties covered by the mortgage in suit, and by a *zarpeshgi* deed, dated 20th November, 1874, were liable for the decretal amount, it appeared that by the deed of 1874 the properties

MORTGAGE—*contd.*

5. PRIORITY—*contd*

in suit were hypothecated as security for Rs. 12,000, the mortgagee to have possession until the amount was repaid in 1887. Subsequently, on dates intermediate between 20th November 1874 and 17th February 1888, three of the properties in suit (the only properties concerned in this appeal) were further charged by simple mortgages, some of them relating only to two of such properties, and one of them relating only to the third of such properties and suits on them were brought on 6th September 1888, 3rd May 1890, and 15th July 1890, and decrees for sale were obtained in them, the mortgagee of the mortgage in suit of 17th February 1888 or her representatives being made parties only to those suits and decrees which related to two of the properties mortgaged The mortgage in suit was repayable in two years, and was by agreement of the parties to it, made for the express purpose of paying off the debt of Rs 12,000 on the *zarpeshgi* deed of 1874, and charged the same properties as were hyphothecated by that deed. The money then borrowed was, on 15th July 1888, in accordance with the agreement, applied in discharging the debt in the *zarpeshgi* deed, and that deed was then given up to the mortgagee of the mortgage in suit, and her representatives, on 16th June 1891, assigned the mortgage in suit to the plaintiffs, who on 22nd September 1900 instituted the present suit making defendants the representatives of the mortgagors, the representatives of the mortgagee, and the persons whose titles as decree-holders and purchasers arose under the intermediate mortgages made between 20th November 1874 and 17th February 1888, claiming priority over the last set of defendants : *Held,* that, under the circumstances, the mortgagee of the mortgage in suit intended to keep alive for her benefit the charge created by the *zarpeshgi* deed of 20th November 1874, notwithstanding that no formal assignment in writing of that deed was made ; and she thereby obtained priority over the mortgagees of the intermediate further charges. *Dinobundhu Shaw Chowdhry* v *Jogmaya Dasi, I. L. R. 29 Calc. 154 ; L. R 29 I. A. 9,* followed *Held,* also, that in any case, she was, under s. 85 of the Transfer of Property Act (IV of 1882), a necessary party to all the suits on the intermediate mortgages, and consequently in the suits to which she or her representatives were made parties, her rights under her mortgage were barred by explanation (2) of s. 13 of the Civil Procedure Code (Act XIV of 1882) by her omission in those suits to put those rights in issue ; though such rights were not affected by the decree in the suit to which she or her representatives were not made parties. But, *held,* further, that the appellants' rights of priority under the *zarpeshgi* deed of 1874 were barred by Art. 132 of the Limitation Act (XV of 1877), the present suit to enforce them not having been instituted within 12 years from the date when the money under that deed became repayable in 1887 *Held,* therefore, that they were only entitled in the present suit to a decree for redemption of their interest

MORTGAGE—*contd.*

5. PRIORITY—*concld.*

in the third property, the subject of the suit, to which their assignors had not been made parties MAHOMED IBRAHIM HOSSAIN KHAN *v.* AMBICA PERSHAD SINGH (1912) . **I. L. R. 39 Calc. 527**

6. REDEMPTION.

1. ——— *Mortgage—Suit for redemption of usufructuary mortgage—Defendants setting up title under sale of mortgagor's interest—Title by adverse possession—Separation of member of joint Hindu family and purchase of property with self-acquired means—Possession adverse to mortgagors.* These were cross appeals from the decision of the High Court in *Muzaffar Ali Khan* v. *Parbati*, *I. L. R. 29 All. 640* The plaintiffs relied on a usufructuary mortgage of 1846 and sued for redemption of the property in suit, two shares in a village called Lohari. The case of the defendants was that they were in possession not under the mortgage but under sales of the 27th of May 1853 and the 20th of March 1854, respectively, by which the equity of redemption in the shares mortgaged in 1846 had passed to those through whom they claimed title, and they pleaded adverse possession. Both the lower Courts had upheld the later sale and dismissed the suit as to that share in Lohari. As to the earlier sale the Courts below had differed, the first Court upholding it, and the High Court deciding in favour of the plaintiffs On appeals by both parties, it was immaterial, in the view taken by their Lordships of the Judicial Committee of that sale (27th May 1853) by what title Ashraf-un-nissa, one of the widows of the mortgagor, obtained the share she took, and whether or not she had a daughter who survived him. Her share was certainly transferred by the sale to Baldeo Sahai, who, though he was the grandson of one of the mortgagees and the son of the other, with both of whom he had lived as a member of a joint Hindu family had, according to reliable evidence, separated from them and at the time of the sale was carrying on, with a nucleus of property derived from his grandmother, a money-lending business from profits of which he was enabled to purchase, with self-acquired funds, the share in Lohari from Ashraf-un-nissa, who purported to sell it to him as a person who was not a mortgagee under the mortgage of 1846 ; and he was therefore not precluded from setting up a title by adverse possession, which it was conclusive in the evidence he had held for more than 50 years. Their Lordships, therefore, while affirming the decision of the Courts below as to the later sale, reversed the decision of the High Court as to the earlier sale, and upheld that transaction also. PARBATI *v.* MUZAFFAR ALI KHAN (1912).
I L. R. 34 All. 289

2. ——— *Mortgage—Redemption—Subsequent agreement qualifying right to redeem—Loss of deed—Onus of proving terms mortgage—Oudh Estates Act (I of 1869),*

MORTGAGE—*contd.*

6 REDEMPTION—*contd.*

s. 6—Limitation—Compromise barring right to redemption There is nothing in law to prevent the parties to a mortgage from coming to a subsequent arrangement qualifying the right to redeem. In this case the mortgage which it was sought to redeem was dated in 1846, and in 1870, the mortgagors had, in consideration of certain additional benefit reserved to them under a compromise, agreed to subject their right of redemption to certain conditions. The deed having been lost, the onus was on the plaintiffs to prove the terms of the mortgage, so as to show that the suit was not barred by s. 6 of the Oudh Estates Act (I of 1869) [see *Raja Kishen Dutt Ram Panday* v. *Narendar Bahadoor Singh*, *L R. 3 I. A. 85*], which onus he was found unable to discharge. *Held* (affirming the decision of the Judicial Commissioner of Oudh), that the plaintiffs were not in any case entitled to redeem as long as there was no breach by the defendants of the covenants contained in the compromise. SHANKAR DIN *v.* GOKAL PRASAD (1912) . . . **I. L. R. 34 All. 620**

3. ——— *Mortgage—Non-payment of greater part of mortgage money—Mortgagee allowed to redeem before expiry of term of mortgage.* Certain property was mortgaged by way of conditional sale for Rs. 599-15-0 for ten years. Of the mortgage money Rs. 50-15-0 only were paid, and the balance was left with the mortgagees for payment to prior incumbrancers. The mortgagees did not pay off the prior incumbrancers, and, the mortgagor having meanwhile sold the mortgaged property, his assignees sued for redemption of the mortgage before the expiry of ten years. *Held*, that, on equitable grounds, the defendants not having performed what was a most essential part of the contract, the plaintiffs ought to be allowed to redeem before the expiration of the period of ten years. CHHOTKU RAI *v.* BALDEO SHUKUL (1912) . . **I. L. R. 34 All. 659**

4. ——— *Transfer by mortgagee—Rights of the transferee—Redemption—Construction of statute—Legislative exposition—Limitation Acts (XV of 1877 and IX of 1908), Art. 134.* The plaintiffs sued in the year 1906 to redeem a mortgage effected prior to the year 1854. The representatives-in-title of the mortgagee, claiming to be absolutely entitled, mortgaged the land with possession to *A* in 1894 and he sold his rights to defendant 5. The suit having been brought more than 12 years after the alienation to *A*, defendant 5 claimed as against the plaintiffs the interest of a mortgagee by virtue of his adverse possession under Art. 134 of the Limitation Act (XV of 1877). *Held*, that it was obligatory on the plaintiffs to redeem defendant 5 before they could recover possession of the property. *Yesu Ramji Kalnath* v. *Balkrishna Lakshman*, *I. L. R. 15 Bom. 583*, *Maluji* v *Fakirchand*, *I. L R. 22 Bom. 225*, and *Ramchandra* v. *Sheikh Mohidin*, *I. L. R. 23 Bom. 614*, followed. *Abhiram Goswami* v. *Shyama Charan Nandi*, *L. R. 36 I. A. 148*,

MORTGAGE—*contd.*

6 REDEMPTION—*contd.*

and *Ishwar Shyam Chand Jiu* v. *Ram Kanai Ghose, I. L. R 38 Calc. 526,* explained. The alteration in the language of Art. 134 of the Limitation Act (IX of 1908) was a legislative recognition of the soundness of the view that the Article was intended to give protection to all transferees for value including mortgagees. *Swift* v *Jewsbury, L. R. 9 Q. B 312,* and *Morgan* v *London General Omnibus Company, 12 Q B. D 201,* referred to. BAGAS UMARJI *v.* NATHABHAI UTAMRAM (1911) **I. L. R. 36 Bom 146**

5. ——— *Mortgage—Right of assignee of mortgagor to redeem first mortgage after a decree for redemption obtained by a puisne mortgagee had become inoperative.* A mortgaged certain properties to *B* and afterwards mortgaged the same with other properties to *C C* obtained a decree for redemption against *B,* but the decree was allowed to become inoperative by not being executed *D* obtained an assignment of the right of *A* in the mortgaged properties and also the rights of *C* therein. *A* sued to redeem the mortgage in favour of *B. Held,* that although the suit by *D* as the assignee of *C* was not maintainable still it was competent to him as assignee of *A* to bring the suit after the decree obtained by *C* had become inoperative. KUTTISSERI RAMAN NAMBOODRI *v.* ACHUTHA PISHURODI (1904) . **I. L. R 35 Mad. 42**

6. ——— *Usufructuary mortgage—Equity of redemption, clog or fetter on—Lease—Right to retain possession as lessee after satisfaction of mortgage.* A provision in a mortgage-deed whereby the mortgagee is to remain in possession after payment of the mortgage debt is unenforceable as it acts as a fetter upon the right to redeem. When a mortgage deed is accompanied by a lease the effect of which is to keep the mortgagor out of possession notwithstanding the discharge by him of the mortgage debt there is a fetter on the equity of redemption which the Court ought not to enforce. ANKINEDU *v.* SUBBIAH (1912) **I. L. R. 35 Mad. 744**

7. ——— *Usufructuary mortgage—Suit for redemption—Accountability of mortgagee for illegal realisation of cess from tenants—Transfer of Property Act (IV of 1882), s 76—Stipulation by mortgagee to pay a portion of profits to mortgagor—Subsequent arrangement regarding mode of payment, if may be proved by parol evidence—Evidence Act (I of 1872), s 92.* Under a usufructuary mortgage of 1877, the mortgagee undertook to pay to the mortgagor an annual sum of Rs. 10 odd and apply the balance of the profits to payment of revenue charges and interest on the mortgage-debt · *Held,* that oral evidence to prove a subsequent arrangement under which the mortgagee allowed the mortgagor to possess and enjoy a portion of the property in lieu of the payment was admissible in evidence inasmuch as it did not supersede or vary the stipulation regarding the payment but merely concerned the mode of payment. *Held,* further, that in a suit for redemption

MORTGAGE—*contd.*

6. REDEMPTION—*concld*

by the mortgagor the mortgagee was bound to account for the amounts they realised from the tenants as cesses subsequently imposed by the Cess Act of 1880, and payable by the tenants to the mortgagor The mortgagee's accountability is not limited to items within the contemplation of the mortgage contract but may extend to amounts which the mortgagee was enabled to realise out of the mortgaged property by taking advantage of his position as mortgagee RAMAVATAR SINGH *v.* TULSI PROSAD SINGH (1911) . **16 C. W. N. 137**

8. ——— *Mortgage—Practice—Redemption decree under appeal by mortgagee—Deposit of decretal amount by mortgagor—Duty of mortgagee to withdraw under protest—Responsibility of mortgagee for loss of right in deposit by lapse of time although amount of decree increased by Appellate Court.* In a suit for redemption the Court of the Judicial Commissioners in India passed a decree entitling the mortgagees to recover a certain sum on account of principal and interest, from which decree the mortgagees appealed to the Privy Council who increased the amount. Pending the appeal the mortgagors had deposited the amount of the decree of the Judicial Commissioners, which however the mortgagees did not withdraw, as they might have done without prejudice to their pending appeal, either by arrangement or the sanction of the Court in India or the sanction of the Board which would have been given as a matter of course : *Held,* that if the amount deposited has lapsed to Government under the rules owing to the same not having been withdrawn in time, the mortgagees must give credit for the amount. CHAMPAT SINGH *v.* JANGU SINGH (1912) . . . . **16 C. W. N. 793**

9. ——— *Transfer of Property Act (IV of 1882), s. 85—Mortgage by Mitakshara co-parceners—Suit for foreclosure in which sons of a mortgagor not joined—Decree if extinguishes son's right—Representation of son's interest by father, when debt not charged as immoral.* The plaintiff's father, amongst other co-parceners of a joint Mitakshara Hindu family, executed a mortgage by conditional sale the term of which expired in 1888, whereupon the mortgagee instituted a suit for foreclosure against the mortgagors and obtained delivery of possession in 1889, in execution of the decree in that suit. The plaintiffs were not made parties in that suit, the mortgagee not having had notice of their interest at the time and they brought the present suit in 1907 for redemption *Held,* that in the absence of allegation by the plaintiffs that the debt was an immoral debt, the father of the plaintiff sufficiently represented the plaintiffs in the previous suit, and with the extinction of the father's right to redeem, the son's right of redemption was also extinguished. *Bunsee Das* v *Gena Lal Jha, 14 C L. J. 530, Ram Taran Goswami* v *Rameswar Malia, 11 C. W. N. 1078,* referred to BALKI MAHAPATRA *v* BROJOBASI PANDA (1912) . . . **16 C. W. N. 1019**

MORTGAGE—*contd*

7. REGISTRATION.

——————— *Mortgage—Registration Act (XVI of 1908), s 23—Registration of mortgage out of time by altering date—Lessee from executant if may question validity of mortgage registered out of time—Estoppel* Where a mortgage-deed had been presented for registration more than four months after the date of its execution and its registration had been secured by the executant altering the date of the instrument: *Held*, that even assuming that the deed had been wrongly registered, there being no fraud, the mortgagor would be estopped from taking the objection *Held*, further, that lessees from the mortgagor who took their leases after the registration of the mortgage are, in the absence of fraud, equally estopped with the mortgagor from taking the objection GOPAL CHANDRA CHUCKRABURTTY *v* SURENDRA KUMAR ROY CHOUDHRY (1912) **16 C. W. N. 585**

8. SALE OF MORTGAGED PROPERTY

1. ——————— *Mortgage*—An application made on the 3rd July 1909, for an order absolute for sale by a mortgagee who had obtained the preliminary decree on his mortgage in the High Court on the 16th December 1886, was barred by Art 183 of Sch. I of the Limitation Act (IX of 1908) or the corresponding article of Act XV of 1877 The application was one to "enforce a judgment" within that article The meaning of the word "enforce" is not limited to realization by execution but may have a wider meaning *Horendra Lall Rai Choudhuri* v *Maharani Dasi, L. R. 28 I A 89*, referred to. *Madhub Moni Dasi* v. *Pamela Lambert, 15 C W N. 337*, distinguished. AMLOOK CHAND PARAK *v* SARAT CHADRA MUKERJEE (1911) . . **16 C. W. N. 49**

2. ——————— *Mortgage—Transfer of Property Act (IV of 1882), s 55, sub-s (5), cl. (b)—Vendor and purchaser—Mortgaged property sold subject to mortgage—Implied contract of indemnity—Seller damnified by reason of buyer not discharging mortgage-debt—Suit for damages if lies—Limitation—Limitation Act (XV of 1877), Sch. II, Art 83—Measure of damages.* Where one buys from another an equity of redemption subject to a mortgage and merely pays for the value of that equity of redemption, he contracts to protect his vendor from the obligation of the mortgage, the buyer's contract with the mortgagor being that the debt should not fall upon the latter. It is a contract of indemnity and the buyer would be bound without any specific contract to indemnify the seller. *Tweedale* v *Tweedale, 2 Brown's Rep. of Ch Cas. 153; 23 Beav. 341*, relied on. Where a portion of the mortgaged property was sold subject to the mortgage, but the buyer having failed to pay off the mortgagee, the latter sued on his mortgage and the whole of the mortgaged property was sold and the seller was dispossessed of the lands which had been retained

MORTGAGE—*contd.*

8 SALE OF MORTGAGED PROPERTY—*concld.*

by him: *Held*, that a suit by the seller for damages against the buyer was governed by Art 83 of Sch. II of the Limitation Act, time running from the date when the seller was actually damnified, *viz*, the date of dispossession. The word "contract" in Art 83 does not mean an express contract. *Quære* Whether, the deed of sale being registered, the period of limitation was that provided by Art 116 *Quære* What under the circumstances would be the proper measure of damages? RAM BARAI SINGH *v* SHEODENI SINGH (1912) **16 C. W. N. 1040**

3 ——————— *Mortgage—Decree on mortgage—Decree set aside as against one mortgagor—Second suit to recover proportionate share of the debt maintainable* A mortgagor died leaving him surviving a brother, two daughters and an illegitimate son The four sons of the brother took an assignment of the mortgage from the mortgagee, and subsequently brought a suit for sale of the mortgaged property against the children of the mortgagor, and, inasmuch as they were themselves owners of part of the mortgaged property, framed their suit as one for the recovery of specific shares of the mortgage money from the portions of the property in the possession of each of the defendants They obtained in this suit an *ex parte* decree, which, however, was set aside as against one of the daughters upon the ground that she was a minor and not properly represented therein. *Held*, that the plaintiffs were not precluded from maintaining a fresh suit against this defendant for the recovery of a share in the mortgage-debt proportionate to her share in the property. RASHID-UN-NISSA *v.* MUHAMMAD ISMAIL KHAN (1912) . . . . **I. L. R. 34 All. 474**

9. MISCELLANEOUS CASES

1. ——————— **Whether security kept alive for benefit of person making payment.**—*Mortgage, discharge of.* The question whether a mortgage which has been satisfied is to be construed as extinguished or kept alive for the benefit of the person who makes the payment, is a question of intention to be determined with reference to the surrounding circumstances as they exist at the time when the mortgage is discharged If it is to the advantage of the person paying that the security should be kept alive, the law will presume that he intended to keep it alive *Bhawani Koer* v *Mathura Prasad, 1 C. L. J. 31*, referred to. MAHALAKSHMAMMAL *v* SRIMAN MADHWA SIDHANTA OONAHINI NIDHI, LD. (1912) **I. L. R. 35 Mad. 642**

2. ——————— **Prior and subsequent mortgages**—*Suit by first mortgage with impleading second—Decree and sale—Subsequent suit by second mortgagee against purchasers under decree in first suit—Plaintiff held bound to redeem first mortgagee* The plaintiff brought his suit for sale of certain property in satisfaction of a mortgage of the year

MORTGAGE—*contd.*

9. MISCELLANEOUS CASES—*contd.*

1877, which was a renewal of a mortgage of 1875. The defendants were purchasers at a sale in execution of a decree on a mortgage which bore a later date in 1875 than the plaintiff's first mortgage, but was a renewal of a previous mortgage of 1869. To the suit in which this decree had been passed the plaintiff had not been made a party. The defendants had been in possession of the property so purchased by them for some twenty years. *Held*, that the plaintiff had no absolute right to bring the property to sale in satisfaction of his mortgage subject to the mortgage of 1869, and that in the circumstances he ought to redeem that mortgage before bringing the property to sale. *Mata Din Kasodhan* v *Kazim Husain, I L. R. 13 All. 432, Ram Shankar Lal* v. *Ganesh Prasad, I L R. 29 All. 385, Har Prasad* v. *Bhagwan Das, I. L. R. 4 All 196, Kanti Ram* v. *Kutub-uddin Mahomed, I. L. R. 22 Calc. 33, Baldeo Prasad* v. *Uman Shankar, I. L. R. 32 All. 1, Mati-ullah Khan* v. *Banwari Lal, I. L. R. 32 All 138, Kanai Lal* v. *Hulas Singh, 9 All. L. J. 29, Cangayan Vankataramana Iyer* v. *Henry James Colley Gompertz, I. L. R. 31 Mad. 425*, and *Har Pershad Lal* v. *Dalmardan Singh, I. L. R. 32 Calc 891*, referred to. *Debendra Narain Roy* v. *Ramtaran Banerjee, I. L. R. 30 Calc. 599*, discussed and doubted. MANOHAR LAL *v.* RAM BABU (1912) **I. L. R. 34 All. 323**

3. ——— *Prior and subsequent mortgagees—Release of part of mortgaged property for less than its value—Suit for recovery of entire balance of mortgage debt from the residue of mortgaged property Held*, that a first mortgagee cannot be allowed to release part of the mortgaged property for less than its due proportion of the mortgage money and then claim a decree against the mortgagor and a puisne mortgagee for the recovery of the whole of the balance of the mortgage money out of the remainder of the property. *Mir Eusuf Ali Haji* v. *Panchanan Chatterjee, 15 C. W. N. 800, Hari Kissen Bhagat* v. *Velait Hossein, I. L. R. 30 Calc. 755*, and *Ponnusami Mudaliar* v *Srinivasa Naickan, I. L R. 31 Mad 333*, referred to. JUGAL KISHORE SAHU *v.* KEDAR NATH (1912) **I. L R. 34 All. 606**

4. ——— **Company**—*Mortgage—Managing agents—Articles of association, breach of, by managing agents—Acts requiring approval of directors—Presumption regarding internal management—Validity of deed irregularly executed—Equitable security—Winding up—Lease—Liquidators in possession—Acquiescence of landlord—Arrears of rents and royalties, whether secured debts.* The company's articles of association empowered the managing agents, with the approval of the directors, to borrow or raise sums of money for the purposes of the company, and to secure repayment of such sums by mortgage or charge of the property of the company, and to draw all such instruments as should be necessary for the carrying on of the business of the company, and directed

MORTGAGE—*concld.*

9. MISCELLANEOUS CASES—*concld.*

that every instrument to which the seal of the company was affixed should be signed by at least one director, and countersigned by the managing agents. *B. D.*, a stranger, advanced money to the company, which was credited in the company's books under loan account, and was given an instrument by way of hypothecation or security, to which was affixed the seal of the company and which was signed by the managing agents, but it did not sufficiently appear that the money had been borrowed with the approval of the directors, and the instrument was not signed by any of the directors as required by the articles: *Held*, that it was not necessary to show the approval of the directors, inasmuch as this was a matter of internal management, regarding which the lender was, if he knew nothing to the contrary, entitled to assume as against the company that the managing agents had the authority or approval of the directors. *The Royal British Bank* v. *Turquand, 6 El. & Bl. 327, In re County Life Assurance Co., L. R. 5 Ch. App. 288, County of Gloucester Bank* v. *Rudry Merthyr Colliery Co.*, [*1895*] *1 Ch. 629*, and *In re Bank of Syria*, [*1901*] *1 Ch. 115*, followed. With regard to the signature of a director, even if the security be not complete, the lender who had advanced money to the company upon the terms that security should be given him, is entitled under the rules of equity to have a charge upon the property of the company. *In re Queensland Land and Coal Co*, [*1894*] *3 Ch. 181*, and *Pegge* v. *Neath Tramways Co., Ld.*, [*1898*] *1 Ch. 183*, followed. Where a landlord, to whom rents and royalties are payable by a company which goes into liquidation, acquiesces in the liquidators remaining in possession of the property leased, he cannot claim to be a secured creditor in respect of arrears of such rents and royalties. CHARNOCK COLLIERIES CO., LD., *v.* BHOLANATH DHAR (1912) **I. L. R. 39 Calc. 810**

MUNICIPAL ASSESSMENT.

——— *Principle of assessment—Valuation of property, basis of—Appeal—Committee—Bengal Municipal Act (Ben. III of 1884), ss 85, 114.* In assessing tax upon persons under clause (*a*) of s. 85 of the Bengal Municipal Act, both the "circumstances" and the "property" referred to in the section must be within the municipality in question. S. 114 of the Bengal Municipal Act does not lay down that application shall be heard and determined by all the Commissioners appointed as members of the Appeal Committee. DEB NARAIN DUTT *v.* CHAIRMAN OF THE BARUIPUR MUNICIPALITY (1911) **I. L. R. 39 Calc. 141**

MUNICIPAL COMMISSIONER.

See BOMBAY MUNICIPAL ACT, S. 297. **I. L. R. 36 Bom. 405**

MUNICIPAL ELECTION.

1. ——— **Claims, applications and objections of voters, notice of**—*List of Voters*

MUNICIPAL ELECTION—*concld.*

Calcutta Municipal Act (Beng. III of 1899), Sch. IV, rules 8 and 9—Extension of time by Chairman, power of, for giving such notice—Specific Relief Act (I of 1877), s. 45, sub-s. (c)—Mandamus. Under rules 8 and 9 of Schedule IV of the Calcutta Municipal Act, 1899, written notice of all claims, objections, and applications referred to therein must be given to the Chairman on or before the 1st January immediately preceding each general election, and the Chairman has no power to extend the time beyond such date. Such notices must be lodged with the Chairman or the Election Department, and a lodging of such notices with the Secretary is not a proper lodging as required by the terms of the Act, even though the Secretary resides in the same building as the Corporation has its office, unless it can be shown that the Chairman had authorized the private residence of the Secretary to be used as a place where such notices could be lodged The omission of a statutory officer to perform his public duties as to settlement of the election roll in the manner provided by the Act is a forbearance to do something that is not consonant to right and justice within the meaning, of s 45 of the Specific Relief Act, 1877; and therefore, if the Chairman has not performed his statutory duties, the Court will issue an order in the form of a *mandamus*. *In the matter of* R. C SEN (1912) . . . **I. L. R. 39 Calc. 598**

2. ——— **Representation of associations for voting power**—*Calcutta Municipal Act (Beng III of 1899), ss. 37, 38 and Sch IV, rr 9 and 10—"Any one individual person," meaning of—Specific Relief Act (I of 1877), s. 45—Practice—Appeal, right of* In rule 9 of Sch IV of the Calcutta Municipal Act of 1899, the expression "any one individual person" is controlled by the expression "association of individuals" immediately preceding, and the selection for the representation of the several associations indicated in the rule, is limited to the individuals composing the associations. A rule was obtained by a candidate for election as Commissioner of a certain ward calling upon the Chairman of the Corporation of Calcutta to show cause why he should not prepare and publish the revised list of voters for the ward under rule 10 of Sch IV of the Calcutta Municipal Act, by rejecting applications filed by a second candidate to have his name entered in the list as the representative of certain associations, and a copy of the rule was served on the second candidate, who together with the Chairman appeared and showed cause. The rule was made absolute. *Quære*: Whether the second candidate had any right of appeal from the order. NISITH C. SEN, *In re* (1912) **I. L. R. 39 Calc. 754**

MUNICIPAL RULES.

See GENERAL CLAUSES ACT (I OF 1904), S. 23 . **I. L. R. 34 All. 391**

MUNICIPALITY.

See BOMBAY MUNICIPAL ACT, S. 297. **I. L. R. 36 Bom. 405**

MUNICIPALITY—*concld*

See DISTRICT MUNICIPAL ACT (BOMBAY S. 96, SUB-SS (2) TO (5). **I. L. R. 36 Bom. 61**

See DISTRICT MUNICIPAL ACT (BOMBAY), S 160 . **I. L. R. 36 Bom. 47**

——— *Election—Practice—Petition against elected member on ground of personation of voters—Limitation—Fresh instances of personation allowed to be pleaded after expiry of time for filing petition.* An elector on the roll of a municipality filed a petition under the rules framed in that behalf by the Local Government against a successful candidate in a municipal election alleging various instances of personation of voters for which the opposite party was stated to be legally responsible. The petition was filed within the time limited by law *Held*, that it was competent to the Court in which such petition was presented to allow the petition to be amended by the addition of fresh instances of personation. NAWAB KHAN *v.* MUHAMMAD ZAMIN (1912) **I. L. R 34 All. 649**

MUNSIF.

See SANCTION FOR PROSECUTION. **I. L. R. 39 Calc. 774**

MUTUAL CONSENT.

See BURMESE LAW—MARRIAGE. **I. L. R. 39 Calc. 492**

MUTUALTIY.

——— **want of—**

See SPECIFIC PERFORMANCE. **I. L. R 39 Calc. 232**

N

NEGLIGENCE.

See BANKER AND CUSTOMER. **I. L. R. 36 Bom. 455**

NEGOTIABLE INSTRUMENTS.

——— *Negotiable Instruments Act (XXVI of 1881), ss 46, 47, 48, 50—Negotiable instrument if may be transferred by registered deed of gift—Transfer of Property Act (IV of 1882), s. 123—Mode in which transferee may enforce his rights—Evidence (Act I of 1872), s. 92—Oral evidence to prove deed of gift to be donatio mortis causa.* When the holder of a Government Promissory note purported to transfer it to another by a registered deed of gift: *Held*, that though there was no endorsement and delivery as contemplated by the Negotiable Instruments Act, there was a valid transfer of the document as a chattel, and the transferee was entitled to it and to the property referred to in it: [How such a voluntary transferee is to enforce recognition of his title and payment of the note not decided] Delivery of the property is not necessary where the gift is by a registered instrument. Oral evidence is not

NEGOTIABLE INSTRUMENTS—*concld.*

admissible to prove that a document which in terms is an out-and-out gift was really meant to be a *donatio mortis causa*. BENODE KISHORE GOSWAMI *v.* ASHUTOSH MUKHOPADHYA (1912)
16 C. W. N. 666

NEW TRIAL.

See PRESIDENCY SMALL CAUSE COURTS ACT (XV OF 1882), S 38.
16 C. W. N. 25

NIBANDHA.

See HINDU LAW—HEREDITARY PRIEST.
I. L. R. 36 Bom. 94

NOLLE PROSEQUI.

See CRIMINAL PROCEDURE CODE, S 437
16 C. W. N. 983

NON-FEUDATORY ZAMINDARS OF CENTRAL PROVINCES.

See ACT OF STATE
I L. R. 39 Calc. 615

NORTHERN INDIA CANAL AND DRAINAGE ACT (VIII OF 1873).

——— ss. 7, 70—

——— *Penal Code (Act XLV of 1860), s. 426—Cutting walls of canal—Mischief—Penal Provisions of the Canal Act not exclusive of the Indian Penal Code. Held,* (i) that s. 70 of the Northern India Canal an Drainage Act, 1873, does not bar the prosecution of an accused person under any other law, for any offence punishable under the Canal Act; (ii) that it is an act for wilful mischief punishable under the Indian Penal Code for any person to make a breach in the wall of a canal. EMPEROR *v.* BANSI (1912)
I. L. R. 34 All. 210

NORTHERN INDIA FERRIES ACT (XVII OF 1878).

——— s. 22—

——— *Ferry—Illegal toll taken by servants of lessee—Lessee himself not responsible Held,* that the lessees of a ferry could not be held responsible under s 29 of the Northern India Ferries Act, 1878, for the taking of unauthorised tolls by their servants when they were not present and took no part in the extortion *Queen-Empress* v. *Tyab Ali, I. L R. 24 Bom 423,* distinguished. EMPEROR *v* BEHARY LAL, (1911)
I. L. R. 34 All. 146

NORTH-WESTERN PROVINCES AND OUDH ACTS.

——— 1869—I.

See OUDH ESTATES ACT.

——— 1873—VIII.

See NORTHERN INDIA CANAL AND DRAINAGE ACT.

NORTH-WESTERN PROVINCES AND OUDH ACTS—*concld*

——— 1878—XVII.

See NORTHERN INDIA FERRIES ACT.

——— 1900—I.

See UNITED PROVINCES MUNICIPALITIES ACT

——— 1901—II.

See AGRA TENANCY ACT.

——— 1901—III.

See UNITED PROVINCES LAND REVENUE ACT.

——— 1904—I.

See GENERAL CLAUSES ACT.

NOTICE.

See BOMBAY MUNICIPAL ACT, ss. 379, 379A . . I. L. R. 36 Bom. 81

See CIVIL PROCEDURE CODE, 1908, O. XXI, R 16 I. L. R. 36 Bom. 58

See COMPANY . I. L. R. 36 Bom. 564

See MUNICIPAL ELECTION.
I. L. R. 39 Calc. 598

See TRUSTS ACT, S. 5.
I. L. R. 36 Bom. 396

See UNDER-RAIYAT
I. L. R. 39 Calc. 278

——— necessity of—

See FURTHER INQUIRY.
I. L. R. 39 Calc. 238

NUISANCE.

See BOMBAY MUNICIPAL ACT, ss. 379, 379A. . . I. L. R. 36 Bom. 81

See EASEMENT . I. L. R. 39 Calc. 59

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OBJECTIONS.

See CIVIL PROCEDURE CODE, 1908, O. XLI, R. 22 . I. L. R. 34 All. 140

OBSCENE PUBLICATION.

——— *Religious poem of spiritual and allegorical character based on an incident narrated in a sacred book of great antiquity and dealing with the acts of divine beings—Work not calculated to deprave or corrupt morals—Penal Code (Act XLV of 1860), s 292—Finding of facts.* The test of obscenity is whether the tendency of the matter charged as obscene is to deprave and corrupt those whose minds are open to such immoral influences and into whose hands such a publication might fall. If in fact the work is one which would certainly suggest to the minds of the young of either sex, or even to persons of more

OBSCENE PUBLICATION—*concld.*

advanced years, thoughts of a most impure and libidinous character, its publication is an offence, though the accused has in view an ulterior object which is innocent or even laudable *Reg.* v. *Hicklin*, L. R. 3 Q B. 360; *Steele* v. *Brannan*, L. R. 7 C P. 261; *Queen-Empress* v. *Parashram Yeshvant*, I.L.R.20 Bom. 193; *Emperor* v. *Hari Singh*, I. L. R. 28 All. 100; *Empress* v. *Indarman*, I. L. R. 3 All. 837, followed. A religious or classical work does not become obscene, within s. 292 of the Penal Code, simply on account of its containing some objectionable passages, because the tendency of such publications is not to deprave or corrupt morals. If objectionable passages in a religious book are extracted and printed separately and they deal with matters which are to be judged by the standard of human conduct, as where they relate to immoral acts of human beings, and the tendency of such publication is to deprave and corrupt those whose minds are open to immoral influences, the publication may not be justified, though the passages form part of a religious book. Where, however, a story which appears objectionable is taken from a religious book and printed separately, but it relates to beings whose conduct is not to be judged by the standard of human beings, it is not an obscene publication, as it would not, on account of its religious character, raise immoral thoughts in the minds of persons who believe in the divinity of beings whose acts and conduct are described in the story Where a poem was published in the Uriya language containing a story, complete in itself so far as it goes, of the dalliances of Radha and Krishna, who were described as divine personages and their acts as supernatural, the latter being represented to be a boy of five, taken from the Uriya *Haribans*, a very sacred book of the Uriyas, the incidents and sentiments being the same as, and the language not more objectionable than, that of the original, and it was in itself an old religious book of a spiritual and allegorical character, which had often been published and registered without exception taken, and which was apparently intended for Hindus who form the vast majority of the Uriyas and believe in the divinity of Radha and Krishna, and do not consider their doings as immoral. *Held*, that the publication was not obscene within the meaning of s. 292 of the Penal Code. KHERODE CHANDRA ROY CHOWDHURY *v.* EMPEROR (1911) **I. L. R. 39 Calc. 377**

OCCUPANCY.

See LAND REVENUE CODE, BOMBAY, ss. 56, 214 . **I. L. R 36 Bom. 91**

OCCUPANCY HOLDING.

See AGRA TENANCY ACT (II OF 1901), s. 22 . . **I. L. R. 34 All. 419**

See ESTOPPEL . **I. L. R. 34 All. 538**
I. L. R. 39 Calc. 513

See MANDADARI TENURE.
I. L. R. 34 All. 155

OCCUPANCY HOLDING—*contd.*

1. ——— *Occupancy holding, non-transferable—Usufructuary mortgage by tenant—Tenant remaining on land as sub-lessee of portion of holding and paying rent—Abandonment—Ejectment* The execution by a tenant of a mortgage of his non-transferable occupancy holding does not by itself amount to an abandonment of the holding because it is only on the assumption that the tenancy continues in operation that the mortgagee can have any subsisting interest in the land. *Krishna Chundra Dutta* v. *Maran Bajania*, *10 C. W. N. 499*, and *Rasik Lall Dutt* v. *Bidhumukhi Dasi*, *10 C W N. 719*, *4 C. L. J. 306*, referred to. Where an occupancy raiyat executed a usufructuary mortgage of his holding, but continued to pay rent to the landlord and remained in possession of a portion of the holding as a sub-tenant under the mortgagor: *Held*, that the landlord was not entitled to treat the raiyat as a trespasser and sue him in ejectment. CHOWDHURY MAHADEO PERSHAD v. SHEIKH PACHKARI (1911)
16 C. W. N. 322

2. ——— *Limitation Act (XV of 1877), s. 28—Dispossession by landlord of raiyat for two years, if extinguishes tenant's title—Bengal Tenancy Act (VIII of 1885), Sch. III, Art. 3—Mortgage of holding to Government for agricultural loan—Sale under Public Demands Recovery Act (Beng. I of 1895)—Interest which passes—Adverse possession against mortgagor if adverse to mortgagee.* An occupancy raiyat borrowed money from Government for agricultural purposes on the security of his holding, but having failed to pay up a certificate, under the provisions of the Public Demands Recovery Act, was issued for the realization of his debt and the holding was sold: *Held*, that only the right, title and interest of the raiyat passed under the sale, as the Secretary of State for India in Council in adopting the procedure of the Public Demands Recovery Act, which does not contemplate the realization of a security, must be taken to have abandoned the security. That the Secretary of State for India in Council could enforce the security only by a regular suit. NANDA KUMAR DEY *v.* AJODHYA SAHU (1911) **16 C. W. N. 351**

3. ——— *Sale in execution of decree—Consent of fractional landlord—Sale if legal.* Where a decree-holder's application for sale of an occupancy holding was granted to the extent of a 15½ annas share upon the finding that co-sharer landlords to that extent had consented to the sale: *Held*, that in the present state of authorities the order should be maintained, the purchaser purchasing at his peril. SHAKARUDDIN CHOUDRY *v.* RANI HEMANGINI DASI (1911)
16 C. W. N. 420

4 ——— *Mortgage by raiyat—Subsequent transfer to stranger—Collusive suit by landlord for ejectment and recovery of possession—Landlord if in possession under paramount title—Suit on mortgage—Landlord if necessary party—Transfer of Property Act (IV of 1882), s. 85.* When it is found that a landlord obtained posses-

OCCUPANCY HOLDING—*concld.*

sion of an occupancy holding, alleged to be non-transferable, by bringing a collusive suit for ejectment against a transferee from the raiyat: *Held*, that in a suit by a mortgagee of the holding on his mortgage, the landlord would be a proper party, his possession of the holding resting on acquisition from the transferee and not on a paramount title. *Jogeswar Dutt* v. *Bhuban Mohan Mitra, I L R. 33 Calc 425*, distinguished. PANCHANAN GHOSE *v.* MIR ABDUL MOLIK (1912) . **16 C. W. N. 920**

5. ——— *Bengal Tenancy Act (VIII of 1885)—Transferability of occupancy holding—Custom and usage, proof of—Sale in execution of decree—Landlord's consent on receipt of nazarana.* Where *nazars* were as a rule paid to the zemindar and on payment of the *nazar* the purchaser was usually recognised by the landlord. *Held*, that it was not evidence of any custom or usage by which an unwilling landlord was bound, or evidence that the landlord was compelled, to recognise the purchaser on payment of *nazar* whether he wished to do so or not. BHOGIRATH CHANDRA MANDAL *v.* SITAL CHANDRA SIRKAR (1912) . . . . . **16 C. W. N. 955**

OFFENCE.

See RIOTING . **I L R. 39 Calc. 781**

OFFENCE COMMITTED ON THE HIGH SEAS.

See HIGH COURT, JURISDICTION OF. **I. L. R. 39 Calc. 487**

OFFICIAL RECORD.

See TEISHKHANA PAPER **I L R. 39 Calc. 995**

ONUS OF PROOF.

See AGREEMENT TO SELL **I. L. R. 36 Bom. 446**

See BURDEN OF PROOF.

OPIUM.

See OPIUM ACT.

See OPIUM ACT (I OF 1878), SS 5, 9. **I. L. R. 34 All. 319**

OPIUM ACT (I OF 1878).

——— **ss. 4, 5 and 9—**

——— *Contract by which person without license is enabled to sell opium void.* *A* and *B* were farmers of opium revenue under Government. They obtained a license from the Collector for the sale of opium, subject to the condition, among others, that they should not sell, transfer or sub-rent their privileges without the permission of the Collector *A* and *B*, without the sanction of the Collector, entered into an agreement with *C*, by which they admitted him as a partner in the opium business. *C* brought a suit for dissolution and winding up of the business. *Held*, that the agreement was void and the suit was not maintainable. The effect of the agreement between *A* and *B* on the one hand and *C* on the other, was to enable *C* to sell opium without a license, an act directly forbidden by s. 4 of the Opium Act and made penal by s. 9 The contract being intended to enable *C* to do what was forbidden by law was unlawful and void The provisions of the Abkari and Opium Acts are not intended merely to protect public revenue but the prohibitions contained in them are based on public policy. The agreement was also illegal as it amounted to a transfer by *A* and *B* of their privilege to *C*, in violation of the condition against transfer subject to which the license was granted. The combined effect of s. 4, 5 and 9 of the Opium Act is to make the transfer in violation of the conditions in the license, illegal NALAIN PADMANABHAN *v.* SAIT BADRINADH SARDA (1912) **I. L. R. 35 Mad. 582**

OPIUM ACT (I OF 1878)—*concld.*

——— **s. 4**—*concld.*

——— **ss. 5, 9—**

——— *Master and servant—Liability of master for act of servant.* Where the servant of a licensed vendor of opium, in the course of his employment as such servant, sold opium to a person under the age of fourteen years, it was *held* that the licensed vendor also was liable under s. 9 of the Opium Act even though he might not have been aware of the sale. *Queen-Empress* v. *Tyab Ali, I. L. R. 24 Bom. 423*, followed. EMPEROR *v.* BABU LAL (1912) **I. L. R. 34 All. 319**

ORAL AGREEMENT.

See LEASE . **I. L. R. 39 Calc. 663**

ORAL EVIDENCE.

See DEKKHAN AGRICULTURISTS' RELIEF ACT, s 10A . **I L. R. 36 Bom. 305**

OSTENSIBLE MEANS OF SUBSISTENCE.

See SECURITY FOR GOOD BEHAVIOUR. **I. L. R. 39 Calc. 456**

OSTENSIBLE OWNER.

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 41 . **I. L. R. 34 All. 22**

OUDH ESTATES ACT (I OF 1869).

——— **s. 6—**

See MORTGAGE . **I. L. R. 34 All. 620**

OVERCROWDING OF HOUSE.

See BOMBAY MUNICIPAL ACT, SS. 379, 379A . **I. L. R. 36 Bom. 81**

OWNER.

See BOMBAY MUNICIPAL ACT, SS. 379, 379A . . **I. L. R. 36 Bom. 81**

OWNER—*concld.*

——— liability of—

See RIOTING . I. L. R. 39 Calc. 834

P

PARDANASHIN DONOR.

See GIFT . I. L. R. 39 Calc. 933

PARDANASHIN LADY.

——— Execution of deed depriving herself of nearly all her property—*Burden of proof—Requisites to be proved—Concurrent findings on facts that burden had not been discharged—First Court's decision on that point affirmed by appellate Court—Finding sufficient to dispose of case.* A pardanashin lady, separated from her husband, unable to read or write, and without independent legal advice, created an endowment of practically her whole property by a deed of which she appointed the appellants (plaintiffs) trustees In a suit for a declaration that the property was *waqf* and for possession of it: *Held*, that, as they relied upon the deed, the onus was on the appellants to show that the nature and effect of it had, at the time of its execution, been explained to and understood by the executant. *Shambati Koeri* v *Jago Bibi, I. L. R. 29 Calc. 749; L. R 29 I A 127*, followed. Upon the question whether that onus had been discharged, the Appellate Court in India affirmed the decision of the first Court to the effect that it had not, but nevertheless allowed an appeal to His Majesty in Council under s. 596 of the Civil Procedure Code (XIV of 1822) on the ground that the judgment of the lower Court had not been *wholly* affirmed. *Held*, that the findings of the Courts below amounted to concurrent findings of fact which could not be disturbed on appeal, and there being no "substantial question of law" the appeal must be dismissed. *Karuppanan Servai* v. *Srinivasan Chetti, I. L. R. 25 Mad. 215; L R 29 I. A. 38*, followed. SAJJAD HUSAIN *v.* WAZIR ALI KHAN (1912) I. L. R. 34 All. 455

PART-HEARD CASE.

See TRANSFER . I L. R. 39 Calc. 146

PARTIES

See CIVIL PROCEDURE CODE, 1908, s. 92. I. L. R. 36 Bom. 168

See EVIDENCE ACT (I OF 1872) s 69. I. L. R. 34 All. 615

See LANDLORD AND TENANT. I. L. R. 39 Calc. 696

See MORTGAGE . I. L. R. 39 Calc. 527

See SECOND APPEAL. I. L. R. 39 Calc. 687

See TRANSFER OF PROPERTY ACT, s. 107. I. L. R. 36 Bom. 500

PARTIES—*concld.*

——— array of—

See HINDU LAW—JOINT FAMILY I. L. R. 34 All. 549, 572

——— joinder of—

See RES JUDICATA. I. L. R. 36 Bom. 207

——— *Execution sale—Reversal of sale—Execution purchaser—Transferee from the purchaser—Civil Procedure Code (Act XIV of 1882), s. 311.* A transferee from the execution purchaser is a necessary party to a proceeding for reversal of the execution sale, when such proceeding is commenced after the transfer has been effected *Bibi Sharifan* v. *Mahomed Hubibuddin, 13 C. L. J. 535*, and *In re Hammersmith Rent-charge, 4 Exch. 87*, referred to. MENAJUDDI BISWAS *v.* TOAM MANDAL (1911) I. L. R. 39 Calc. 881

PARTITION.

See CUSTOM . I. L. R. 39 Calc. 418

See HINDU LAW—INHERITANCE. I. L. R. 34 All. 234

See HINDU LAW—JOINT FAMILY. I. L. R 36 Bom. 275

See HINDU LAW—PARTITION. I. L. R. 34 All. 189, 505 I. L. R. 36 Bom. 379

See JOINT OWNERS I. L. R. 34 All. 113

See RES JUDICATA. I. L. R. 36 Bom. 127

——— suit for—

See COURT-FEES ACT (VII OF 1870), SCH. II, ART. 17 (VI) I. L. R. 34 All. 184

See HINDU LAW—DEBT. I. L. R. 36 Bom 68

1. ——— *Appeal against preliminary decree—Final decree passed during pendency of appeal—Cross objections filed against final decree—Appeal against preliminary decree maintainable.* Where the plaintiffs in a suit for partition had preferred an appeal from the preliminary decree, and had also, in the defendant's appeal from the final decree, filed cross objections, it was *held* that there was no bar to the hearing of the plaintiffs' appeal against the preliminary decree. *Kuriya Mal* v. *Bishambhar Das, I. L. R 32 All. 225*, and *Narain Das* v. *Balgobind, 8 All. L. J. 604*, distinguished. MUHAMMAD AKHTAR HUSAIN KHAN *v.* TASSADDUQ HUSAIN (1912) I. L. R. 34 All. 493

2. ——— *Decree awarding shares—Appeal—Death of a sharer leaving daughters—Decree for partition final—Severance effected by the decree can be displaced only by a legal decree in appeal.* In a suit for partition the first Court passed a decree awarding to the sharers their respective shares. While an appeal against the

PARTITION—*concld.*

decree was pending, one of the sharers died leaving two daughters. Thereupon a question having arisen as to whether the shares of the surviving sharers were liable to be increased owing to the death of the sharer pending the appeal: *Held*, that the pendency of the undecided appeal did not detract anything from the vitality or the force of the existing decree. Although the decree was under appeal, it was not the less a final decree of a competent Court. The decree, once made, there and then determined the legal status or relation of the parties and the severance of interest so effected by the decree at the moment it was pronounced could be displaced only by a legal decision in appeal. *Sakharam Mahadev Dange* v *Hari Krishna Dange, I L R 6 Bom 113*, explained MAHADEV LAXMAN *v.* GOVIND PARASHRAM (1912) . . **I L. R. 36 Bom. 550**

PARTNERSHIP.

1. ——— *Contract Act (IX of 1872), s. 253 (10)—Partnership business carried on after death of partner on the assumption of representative continuing as partner—Widow of deceased, a pardanashin lady, not taking any part in business and not examining accounts—Accountability of working partners—Accounts to commence from beginning of partnership, if accounts not settled—Partnership money, diversion of—Accounting with interest or profits—Remuneration to working partner—Balancing of accounts, effect of* Where on the death of a partner the business was carried on on the assumption that his widow was a partner: *Held*, that the conduct of the parties showed that there must have been a contract between the original parties that the partnership would not be dissolved by the death of a partner within the meaning of cl. (*10*) of s. 253 of the Indian Contract Act, but should be continued with the representative of the deceased as a partner. The mere balancing of account in a book of account does not itself constitute an account stated, much less does it constitute an account settled which the parties cannot reopen. In a general account of partnership dealings, the time from which the account is to be in is the commencement of the partnership unless some account has since that time been settled by the partners in which case the last settled account will be the point of departure. Where one of the partners having the right to examine the partnership accounts did not for a long time exercise the right: *Held*, that unless fraud was established purchases and sales in respect of the business by the working partners should not be challenged, but they were bound to account for sums withdrawn from the partnership business and applied for purposes unconnected therewith with the profits realised therefrom or with interest at the option of the partner demanding the account. Where one of the partners wilfully leaves the others to carry on the partnership business unaided, the Court may upon dissolution decree an allowance in favour of the partner who had carried on the business alone. GOKUL KRISHNA DAS *v.* SASHIMUKHI DASI (1911) **16 C. W. N. 299**

PARTNERSHIP—*concld.*

2. ——— *Partnership accounts—Banking concern, joint—Deposit by a partner payable with interest—Suit to recover deposit if maintainable—Suit if maintainable when suit for dissolution and accounts previously instituted—Civil Procedure Code (Act V of 1908), s 10.* Where it was arranged between the mother and guardian of plaintiff, a minor partner of a banking concern, and his co-partners that each of the partners would be entitled to draw a certain fixed monthly allowance from the bank for personal expenses, but the minor's allowance was by arrangement not taken out but permitted to accumulate with interest in the bank, and in a suit for dissolution and accounts by the plaintiff he applied for an order on the Receiver appointed in the suit to pay the amount of the deposit with interest, but the decision of the Court being adverse, he instituted a fresh suit for the recovery of deposits with interest less one-third, the proportion recoverable from himself as a partner, but the suit was dismissed, and pending an appeal from the order of dismissal the plaintiff obtained an order of the High Court in revision directing an account to be taken of the amount alleged to be in deposit if plaintiff's appeal should fail *Held*, that the suit was rightly dismissed as barred by the provisions of s 10 of the Civil Procedure Code, as the matter in issue in the suit was directly and substantially in issue in the previously instituted suit To stay the suit according to the strict language of s. 10 until by the decision of the previous suit the matter would be *res judicata* was needless. *Obiter:* Though, on general principles, the claim of a partner against a joint banking concern must, in course of winding up proceedings, be postponed to those of outsiders, there may be cases in which the complete solvency of the bank is admitted and a partner might sue, like any other customer, for the taking separately of his private account as a customer and for the recovery of the balance found standing to his credit. Relief in such a case will only be refused when a partial account will work in justice to the other partners. Lindlay on Partnership, p 592 and *Karri Venkata Reddi* v *Kollu Narasayya, I. L. R 32 Mad. 76, 80*, relied on. MOHADEO PROSAD SAHU *v* GAJADHAR PROSAD SAHU (1912) **16 C. W. N. 897**

PARTY.

See RES JUDICATA. **I. L. R. 36 Bom. 189**

PATTA.

See UNDER-RAIYAT. **I. L. R. 39 Calc. 278**

PAUPER.

See CIVIL PROCEDURE CODE, 1908, SCH. I. **I L. R. 36 Bom 415**

PAUPER SUIT.

See CIVIL PROCEDURE CODE (1882), s 411 . . **1. L. R. 34 All. 223**

See CIVIL PROCEDURE CODE, 1908, O. XXXIII **I. L. R. 36 Bom. 279**

PAYMENT INTO COURT.

See CIVIL PROCEDURE CODE, 1908, ——— ss. 47, 73, O. XXI, R. 55—
I. L. R. 36 Bom. 156

PENAL CODE (ACT XLV OF 1860).

——— **ss. 34, 109, 467**—*Forgery—Abetment of forgery—Abetment by conspiracy—Conspiracy at Cambay, foreign territory—Consequent forgery committed in British India—Trial in British India of the foreigner who conspired to forge at Cambay and who was in Cambay when the forgery was committed in British India—Jurisdiction.* The accused was a subject of the Cambay State. He lived there and traded with his business partner *A*. He conspired with *A* at Cambay and sent *A* to a professional forger at Umreth (a place in British India) with instructions to instigate the latter to forge a valuable security. To facilitate the forgery, the accused sent his *khata* book with *A*. In pursuance of A's instigation the forgery was committed at Umreth. On these facts, the accused was charged, in a Court in British India, with the offence of abetment of forgery under ss. 467 and 109 of the Indian Penal Code. The trying Judge referred to the High Court the question whether the accused, not being a British subject, was amenable to the jurisdiction of his Court: *Held*, that the Court in British India had jurisdiction to try the accused, for the accused's offence was not wholly completed within Cambay limits, but having been initiated there, was continued and completed within the British territory of Umreth. Where a foreigner starts the train of his crime in foreign territory, and perfects and completes his offence within British limits, he is triable by the British Court when found within its jurisdiction. S. 34 of the Indian Penal Code provides not only for liability to punishment but also for subjection of a conspirator to the jurisdiction of a Court, though he conspires at a place beyond the jurisdiction. EMPEROR *v.* CHHOTALAL BABAR (1912)
I. L. R. 36 Bom. 524

——— **ss. 97, 99**—*House search by Police officer—General search—Search for specific article—Criminal trespass—Right of private defence—Code of Criminal Procedure (Act V of 1898), ss. 433, 437, 165 and 94—District Magistrate, power of, to order further enquiry after discharge.* Every person has a right subject to the restrictions contained in s. 99 of the Indian Penal Code to defend property, whether moveable or immoveable, of himself or of any other person against any act which is an offence falling within the definition of criminal trespass. The law does not empower a police officer to search an accused person's house for anything but the specific articles which have been or can be made the subject of summons or warrant to produce. A general search for stolen property is not authorised and the law cannot be got over by using such an expression as "stolen property relevant to the case" as the law requires the mention of specific things. Where one of the accused in resisting such a search pushed the Sub-Inspector and the latter ordered

PENAL CODE (ACT XLV OF 1860)—*contd.*

——— **s. 97**—*concld.*

two constables to climb on his roof and break into the house, whereupon the villagers assumed a threatening attitude and threatened to cut them to pieces if they entered the house and this empty threat was sufficient to prevent the Police from committing the trespass: *Held*, that the accused had not exceeded the right of private defence and were rightly discharged, and there was no ground for further enquiry PRANKHANG *v.* KING-EMPEROR (1912) . **16 C. W. N. 1078**

——— **ss. 99, 147, 323**—
See RIOTING **I. L. R. 39 Calc. 896**

——— **ss. 114, 325**—*Grievous hurt—Abetment by conspiracy Held*, that when the evidence against the co-accused was that they themselves came with the first accused and joined in beating the deceased, they could not be convicted of abetting the causing of grievous hurt by their presence because they would have been guilty of abetment had they been absent If it be found that they all joined in the beating and that the specific act which caused the grievous hurt was not brought home to any particular individual, they would be held liable under s. 34 of the Indian Penal Code; if they aided and abetted or abetted by intentionally aiding the first accused in beating the deceased, then they would be liable under s. 326 read with s 109 of the Indian Penal Code JAMIRUDDI BISWAS *v* KING-EMPEROR (1912)
16 C. W. N. 909

——— **s. 121 A**—

1. ——— **Conspiracy.**—*Abandonment of charge of dacoity, if a bar to trial for conspiracy.* The fact that proceedings for participation in a dacoity against certain individuals were dropped owing to insufficiency of evidence, does not preclude a charge for conspiracy in respect of that dacoity from being brought against the same persons and others, for the criminality of a conspiracy is distinct from and independent of the criminality of overt acts. *Emperor* v. *Nani Gopal, 15 C. W. N. 593*, distinguished. PULIN BEHARY DAS *v.* KING-EMPEROR (1911) . . **16 C. W. N. 1105**

2. ——— *Association in lathi play if evidence of intention to wage war. Lathi* play by itself is perfectly harmless, and standing alone cannot be treated as evidence of a conspiracy to wage war To attach sinister significance to the mere association in play or pastime of those that live in the same village or attend the same school would be dangerous specially when those exercises were undertaken with a complete absence of secrecy and rather with a courting of publicity. *Emperor v. Nani Gopal, 15 C. W. N. 593*, followed PULIN BEHARY DAS *v* KING-EMPEROR (1911) . . **16 C. W. N. 1105**

3. ——— *An association if a branch of a revolutionary organisation—Proof. Per* MOOKERJEE, *J.*—In the absence of "a joint design, a joint combination" one association could not

PENAL CODE (ACT XLV OF 1860)— *contd.*

——— s. 121A—*contd.*

be held to be a branch of another association proved to have had revolutionary designs. PULIN BEHARI DAS *v* KING-EMPEROR (1911) **16 C. W. N. 1105**

4. ——— *Letter written by stranger to a conspirator if sufficient to establish former's connection with conspiracy.* A letter written by a stranger to a conspirator which is not shown to have been received or replied to or otherwise acted upon by the latter is not sufficient to establish the former's connection with the conspiracy so as to make his acts done in pursuance of the conspiracy. *R* v. *Boulton, 12 Cox. C. C 87, 92,* relied on. PULIN BEHARY DAS *v.* KING-EMPEROR (1911) . **16 C. W. N. 1105**

5. ——— *Conspiracy, crime of, essence of —Overt acts, bearing of—Proof of conspiracy, indirect—Acts of co-conspirators before and after entry into conspiracy, if admissible and for what purpose—Members of revolutionary society not acquainted with its real object, if guilty of conspiracy—Arms, find of, after arrest and pending prosecution of conspirator, if evidence* Overt acts may properly be looked at as evidence of the existence of a concerted intension and in many cases it is only by means of overt acts that the existence of the conspiracy can be made out. But the criminality of the conspiracy is independent of the criminality of the overt act *Heymann* v. *R, L R. 8 Q. B. 302; 12 Cox C. C. 383, O'Connell* v. *R, 11 Cl. & F. 155; 1 Cox. C. C 413,* and *R* v *Duffield, 5 Cox C C. 404, 434,* referred to. The prosecution is not obliged to prove a conspiracy by direct evidence of the agreement to do an unlawful act. If the facts proved are such that the jury, as reasonable men, can say that there was a common design and the prisoners were acting in concert to do what is wrong, that is evidence from which the jury may suppose that a conspiracy was actually formed. *R.* v. *Brown, 7 Cox C C. 442,* followed. Where it appeared that certain members of a society found to be revolutionary were not acquainted with the real object of the society, not having been admitted to its secrets, it was *held* that it would not be proper to convict such members under s. 121A of the Indian Penal Code. The criminality of a conspiracy lying in the concerted intention, once reasonable grounds are made out for belief in the existence of the conspiracy amongst the accused, the acts of each conspirators in furtherance of the object are evidence against each of the others, and this whether such acts were done before or after his entry into the combination, in his presence or in his absence. Conspirators are not thereby necessarily subjected to punishment for everything done by their fellows; but acts done prior to the entry of a particular person into the combination are evidence to show the nature of the concert to which he becomes a party, whilst subsequent acts of the other members would indicate further the character of the common design in which all are presumed to be equally concerned. *R* v. *Murphy, 8 C. & P 297, 310, R* v. *Read, 6 Cox C C 134, R.* v. *Stenson, 12 Cox C C. 111, O'Keefe* v. *Walsh, 2 I. R 681,* relied on. If arms were collected and secreted in furtherance of a conspiracy before the activities of the associates had been brought to an end by their arrest, the fact that they were discovered after the arrest and after prosecution had been started against them would not make the evidence of the find inadmissible at the trial. PULIN BEHARY DAS *v.* KING-EMPEROR (1911) . **16 C. W. N. 1105**

PENAL CODE (ACT XLV OF 1860)— *contd.*

——— s. 121A—*concld.*

6. ——— *Possession of objectionable books if proof of guilty intention.* The mere circumstances that a book of an objectionable character is present in the library of an individual or an association does not justify the inference that the teachings of the books are approved and adopted by persons who have access to it. The mere fact that books of a distinctly revolutionary character were found in the library of an association and were now and then read by some of its members, would not conclusively show that the object of the society was revolutionary. *Emperor* v *Nani Gopal, 15 C. W. N. 594,* followed *R* v *Watson, 2 Starkie 116, 147; 32 Howell St Tr 354;* East on Pleas of the Crown, p 119, referred to The presence of seditious literature of this description written by members of the society would however be an important element in furnishing a clue to their tendencies and designs. *Per* HARINGTON, *J.*—The utmost that can be said of persons in whose library are found books which are calculated to excite hatred against the English, is that they approved of literature of that nature and even that assumption would not in all cases be a just one. But the presence in the library of a *Samity* of violently revolutionary literature (some of them written in the hands of a member of the *Samity*) urging the destruction of the English and exulting persons who had murdered English people, justified the inference that the members of the *Samity* were imbued with the sentiments those documents expressed. PULIN BEHARY DAS *v* KING-EMPEROR (1911) . **16 C. W N. 1105**

——— ss. 121A, 123—*Conspiracy to wage war against the King and concealing existence of conspiracy in furtherance thereof—Joint trial for both offences, if legal. Per Curiam* When persons, engaged in a conspiracy within the meaning of s. 121A of the Penal Code, in furtherance of their object conceal the existence of the conspiracy from the authorities, a charge under s. 123 of the Penal Code may be legally joined with one under s. 121 A. *Barindea Kumar Ghose* v. *King-Emperor, I. L. R. 37 Calc., 467: 14 C. W. N. 1114,* followed. PULIN BEHARI DAS *v.* KING-EMPEROR (1911) **16 C. W. N. 1105**

PENAL CODE (ACT XLV OF 1860)—*contd.*

——— **s. 124A**—

See SEDITION.
I. L. R. 39 Calc. 522, 606

——— **ss. 147, 332**—

See MAGISTRATE, JURISDICTION OF.
I. L. R. 39 Calc. 377

1. ——— **s. 149**—*Charge under s. 325, read with s. 149—Conviction under s. 325, illegal—s 34, when applicable.* Where the accused were charged and convicted by the Magistrate under s. 147, Indian Penal Code, and s. 325 read with s. 149, Indian Penal Code, and the Sessions Judge in appeal set aside the conviction under s. 147, Indian Penal Code, and altered the conviction under s. 325 read with s. 149, Indian Penal Code, to one under s. 325, Indian Penal Code: *Held*, when a person is charged by implication under s 149, Indian Penal Code, he cannot be convicted of the substantive offence When a Court draws up a charge under s. 325 read with s. 149, Indian Penal Code, it clearly intimates to the accused persons that they did not cause grievous hurt to anybody themselves but that they are guilty by implication of such offence inasmuch as somebody else in prosecution of the common object of the riot in which they were engaged did cause such grievous hurt. When these accused persons are acquitted of rioting obviously all the offences which they are said to have committed by implication disappear, and the defence cannot be called upon to answer to the specific act of causing grievous hurt simply because it may have appeared in the evidence. S. 34, Indian Penal Code, can only come into operation when there is a substantive charge The considerations which govern s 34, Indian Penal Code, are entirely different from and in many respects the opposite of those which govern s. 149, Indian Penal Code. REAZUDDI *v.* KING-EMPEROR (1912) . . . **16 C. W. N. 1077**

2. ——— *Existence of common object before commencement of fight not necessary to constitute offence—Criminal Procedure Code, ss. 237, 238, 423 (b)—Appellate Court has power to convict accused of an offence of which he is acquitted in cases not falling under ss. 237, 238.* To constitute an offence under s. 149 the existence of a common object before the commencement of the fight is not necessary. It is enough if the common object is adopted by all the accused. The power of an Appellate Court under s. 423 (*b*) of the Criminal Procedure Code to alter the finding while maintaining the sentence is not confined to cases falling under ss. 237 and 238 of the Code. The finding which an Appellate Court may alter under s. 423 (*b*) may relate either to an offence with which the accused is apparently charged in the lower Court, or to one of which he might be convicted under ss. 237 and 238 without a distinct charge. In cases not falling under ss. 237 and 238, he cannot be convicted of an offence with which he was not charged in the lower Court. Where, however, he has been charged and the lower Court has recorded a finding on such charge, the Appellate Court can alter the finding. GOLLA HANUMAPPA *v.* EMPEROR (1911) . . **I. L. R. 35 Mad. 243**

PENAL CODE (ACT XLV OF 1860)—*contd.*

——— **s. 149**—*concld.*

——— **s. 154**—

See RIOTING . **I. L. R. 39 Calc. 834**

——— **ss. 182, 211**—*Sanction to prosecute—Criminal Procedure Code, s. 195.* *H.* made a report against several persons; including one *S.*, at a police station charging them with rioting and voluntarily causing hurt. The police made inquiry and sent up several persons for trial, but not *S.* Some of these were convicted by the Magistrate, but acquitted by the Sessions Judge. Thereupon, *S.* made a complaint to the Magistrate charging *H* with having made a false report in respect of himself to the police The Magistrate took cognizance of the complaint *Held*, that the Magistrate had no power to take cognizance of the complaint by reason of the absence of sanction. EMPEROR *v.* HARDWAR PAL (1912)
I. L. R. 34 All. 522

——— **s. 193**—

See THUMB-IMPRESSION.
I. L. R. 39 Calc. 348

——— **s. 292**—

See OBSCENE PUBLICATION.
I. L. R. 39 Calc. 377

——— **s. 296**—*Disturbing a religious assembly—Religious procession on a highway—Carrying of flags to a temple.* Where certain Lodhas, who, with the sanction of the public authorities, had been carrying flags to a temple in procession through a public street, were attacked by persons who objected to the procession: *Held*, that such attack constituted a disturbance of the performance of a religious ceremony punishable under s. 296 of the Penal Code. EMPEROR *v.* MASIT (1911) . . . **I. L. R. 34 All. 78**

——— **s. 304A**—

See CAUSING DEATH BY RASH OR NEGLIGENT ACT . **I. L. R. 39 Calc. 855**

——— **s. 366**—*Kidnapping—Taking out of custody.* Where two girls under the age of 16 years ran away from their houses and remained for nearly one or two days in the house of a woman, who belonged to the cast of *Naiks* in Kumaun and no report was made to the *padhan* or the *patwari*: *Held*, that the woman in whose house the girls stayed was properly convicted of an offence under s. 366 of the Penal Code. *Queen* v. *Gunder Singh, W. R. Cr. 6*, dissented from. EMPEROR *v.* JASAULI (1912) . . **I. L. R. 34 All. 340**

——— **s. 379**—*Theft—Removal of goods from a person's custody—Larceny.* In order to constitute larceny there must be an intention to take entire dominion over the property, *i.e.*,

PENAL CODE (ACT XLV OF 1860)— *contd.*

——— s. 379—*concld.*

the taker must intend to appropriate the property to his own use, but there may be theft without an intention to deprive the owner of the property permanently. Hence, where a person snatched away some books from a boy as he came out of school and told him that they would be returned when he came to his house: *Held*, that the offence of theft had been committed. *R* v. *Dickinson, R. & R. 420; Prosonno Kumar Patra* v. *Udoy Sant, I. L. R 22 Calc. 669*, and *Queen-Empress* v. *Agha Muhammad Yusuf, I. L R. 18 All. 88*, referred to. EMPEROR *v.* NAUSHE ALI KHAN (1911) . . . . **I. L. R. 34 All. 89**

——— s. 392—*Charge, amendment by Sessions Judge before hearing evidence—Criminal Procedure Code, s. 227.* Where the appellants were committed to the Court of Sessions on a charge of dacoity, and the Sessions Judge without assigning any reason, at the commencement of the trial amended the charge to one of robbery: *Held*, that it was improper for the Sessions Judge to thus alter the character of the charge before hearing evidence. That under the circumstances of the case the fact that the appellants pointed out the places where some of the articles stolen in a robbery were found was not sufficient evidence to convict them under s 392, Indian Penal Code or even under s. 411, Indian Penal Code. *Queen-Empress* v. *Gobinda, I. L. R. 17 All 576*, followed. PAIMULLAH *v.* KING-EMPEROR (1911) **16 C. W. N. 238**

——— s. 399—

See MAGISTRATE **I L. R. 39 Calc. 119**

——— s. 400—*Section to be strictly construed—Association for dacoity—Gist of offence—Kind of evidence sufficient to convict—Approver's testimony—Corroboration—Proof that accused members of a criminal tribe, value of—Previous conviction, value of, when no association established—Acquittal, effect of.* The offence contemplated in s. 400 of the Penal Code is one of a very special character and entirely the creature of statute and should therefore be strictly construed. *The Queen* v. *Mooktaram Sirdar, 23 W. R. Cr 18*, referred to. Association for the habitual pursuit of dacoity is the gist of the offence punishable under the section. Although the evidence need not show the same degree of particularity as to the commission of each dacoity as is required to support a substantive charge of that crime, it must be established for the purpose of conviction under the section that the accused belong to a gang whose business is the habitual commission of dacoity. The special conspiracy must be proved. *Empress* v. *Kure, All W. N. (1886) 65, 66; King-Emperor* v. *Tirumal Reddi, I. L. R. 24 Mad. 523; The Public Prosecutor* v. *Bonigiri Pottigadu, I. L. R. 32 Mad. 179*, referred to. Corroboration of the testimony of an approver in a trial under s. 400, must connect the accused with the offence, *viz.*, the association of a gang of persons for the business

PENAL CODE (ACT XLV OF 1860)— *contd.*

——— s 400—*concld.*

of habitually committing dacoity. The general criminality of a tribe or caste cannot be imputed to individual members operating in gangs where the prosecution is under s. 400, and the fact that members of the tribe generally were alleged to have been implicated in several dacoities within a period of ten years preceding the trial was not sufficient proof against the persons under trial when it appeared that the tribe contained within it thousands of human beings. Where association for the purpose of habitually committing dacoity had not been made out, the mere fact that some of the accused had been previously convicted of dacoity or theft or had been bound down to be of good behaviour under s. 110, Criminal Procedure Code, was of no consequence. The fact that some of the persons undergoing trial for an offence under s. 400 had once been sent up on a charge of dacoity of which they were acquitted, could not be relied on to prove that they were habitual dacoits. No adverse inference can be drawn against accused persons after their acquittal. *The Emperor* v. *Nani Gopal Gupta, 15 C. W. N. 593, Rex* v. *Plumber, [1902] 2 K. B. 339*, followed. *Bonai* v. *The King-Emperor, 15 C. W. N 461*, distinguished KADER SUNDAR *v.* THE EMPEROR (1911) **16 C. W. N. 69**

——— s. 415—

See EVIDENCE ACT (I OF 1872) SS. 14, 15 . . . **I. L. R. 34 All. 93**

——— s. 426—

See NORTHERN INDIA CANAL AND DRAINAGE ACT (VIII OF 1873), SS. 7 AND 70 . . . **I. L. R. 34 All. 210**

——— s. 429—*Cutting off the ears of a horse is 'maiming' within section.* The cutting off the ears of a horse is 'maiming' within the meaning of s 429 of the Indian Penal Code. MARIGOWDA *v* SRINIVASA RANGACHAR (1912) **I. L. R. 35 Mad. 594**

——— s. 441—*Criminal trespass, distinguished from civil trespass—Placing hay-stacks and manure on another man's land—Intention to cause annoyance, must be found* The placing of hay-stacks and manure on another man's land may be civil trespass. It may cause annoyance in fact, but the act cannot be treated as criminal trespass unless it is found that it was intended by the accused to be annoyance. "The distinction between civil and criminal trespass is one which is lost sight of by too many of the Subordinate Magistrates." MEAJAN *v.* SHARAFATULLAH KHAN (1912) . . . . **16 C. W. N. 1007**

——— ss. 456, 457—*Charge of house-breaking to commit theft—Conviction under s. 456, if proper—Misjoinder of charges—Charge under s. 457, conviction under s. 556, illegality of.* An accused person who was being tried on a charge under s 457 for house-breaking with intent to commit theft, could not be convicted under s. 456, Indian Penal Code, without amendment of the

PENAL CODE (ACT XLV OF 1860)—*concld.*

——— s. 456—*concld.*

original charge. Although it is not necessary under s. 456, Indian Penal Code, to specify any particular offences intended to be committed, when a particular offence is specified under s 457, Indian Penal Code, it is incompetent for the Court to convict the accused of house-breaking with some other intent. JHARU SHEIKH *v* THE KING-EMPEROR (1912) . . . **16 C. W. N 696**

——— s. 457—*'Intent to annoy' what amounts to.* *A* with a view to support a fraudulent claim of title to a house, broke into it during the temporary absence of the owner, assaulted the owner's servant who was in charge of the house and took forcible possession of it: *Held*, that *A* was rightly convicted of the offence of house-breaking under s. 457, Indian Penal Code. *Per* BENSON, *J.*—That an intent to annoy under s. 457 is established if annoyance in the ordinary course of events is known by the person committing the act to be the natural consequence of such act. A man must in law be held to intend the natural and ordinary consequences of his acts, irrespective of what his object was at the time of doing such acts if at such time he knows what the ordinary and natural consequences will be. If he does an act which is illegal, it does not make it legal that he did it with some other object unless the object was such as would under the circumstances render the particular act lawful. *Per* SANKARAN-NAIR, *J.*—That although the act complained of necessarily involved annoyance, yet, unless the intention of the accused was to annoy, it may be that the act cannot be said to have been committed with intent to annoy. *Emperor* v. *Bazid, I. L. R 27 All, 298*, referred to. *Queen-Empress* v. *Rayapadayachi, I. L. R. 19 Mad. 240*, referred to. *A*, however, in doing the act complained of intended to use criminal force to the servant in possession and therefore intended to commit an offence. SELLAMUTHU SERVAIGARAN *v.* PALLAMUTHU KARRUPPAN (1911) . . . . **I. L. R. 35 Mad 186**

——— ss. 494, 109—

See MAHOMEDAN LAW—BIGAMY.
I. L. R. 39 Calc. 409

——— s. 498—*Enticing away a married woman—Marriage—Hindu law—Whether marriage legal between a Bania and the illegitimate daughter of a Brahman and a Banya woman Held*, that there was no reason why a marriage between a Banya and the illegitimate daughter of a Brahman father and Banya mother should not be valid according to Hindu law, especially when the marriage was recognized by the caste to which the husband belonged. *Padam Kumari* v. *Suraj Kumari, I. L. R 28 All 458*, and *In the matter of Ram Kumari, I. L R. 16 Calc 264*, referred to. EMPEROR *v* MADAN GOPAL (1912)
I L. R. 34 All 589

PENALTY.

See CONTRACT ACT, S. 74.
I. L. R. 36 Bom. 164

PENDING PROCEEDINGS.

See DEKKHAN AGRICULTURISTS' RELIEF ACT, S. 10A . **I. L. R. 36 Bom. 305**

PERILS OF THE SEA.

See INSURANCE . **16 C. W. N. 991**

PERMANENT TENANCY.

1. ——— **Building lease**—*Lease, construction of—Permanency, inference as to—Dwelling house—Long possession* The mere facts that a lease of land was for dwelling purposes and that the lessees have been allowed to remain in possession of the land on payment of rent for a long period would not in themselves be sufficient to establish the permanent nature of the tenancy where there is nothing to show that the building was contemplated to be or in fact was a masonry building BARADA PROSAD BARMAN *v.* PRASANNO KUMAR DAS (1912) . . . **16 C W. N. 564**

2. ——— *Lease—Presumption of permanency—Lease for building purpose—Long possession—Uniform rent—Permanency, question of mixed law and fact—Second appeal* Where the origin of a tenancy was unknown, and it was established (i) that the original tenant and his successor had been in occupation of the land for over sixty years, (ii) that the rent had never been varied, (iii) that the tenancy had been treated by the landlord as heritable, and (iv) that the land was let out for residential purposes, the inference was *held* to be legitimate that the tenancy at its inception was permanent. The question of the nature of the tenancy is a mixed question of fact and law; the inference as to the nature of the tenancy from the facts found is a question of law which can be gone into on second appeal. MOHARAM CHAPRASI *v.* TELAMUDDIN KHAN (1911)
16 C. W. N. 567

PILGRIMAGE.

See HINDU LAW —LEGAL NECESSITY.
I. L. R. 36 Bom. 88

PLAINT.

——— **amendment of**—

See CIVIL PROCEDURE CODE, 1908, S. 92.
I. L. R. 36 Bom. 168

PLEADER.

1 ——— **Duty towards client**—*Pleader in the mofussil—Winding up proceedings—Pleader must not represent parties whose interest are conflicting—Bombay Regulation II of 1827, s 56* By the custom of the mofussil a pleader employed by a party to a proceeding before a Court is bound faithfully and exclusively to serve that party throughout the whole proceeding. The pleader in the mofussil is not merely an advocate—he is the confidential legal adviser of his client and does for him those things which in the presidency towns are often done by solicitors. For legal advice, for the prosecution of legal

PLEADER—*contd.*

proceedings in all their stages, the client depends on the pleader. This dependence makes the position of the pleader peculiarly onerous and binds him to give exclusive attention to the interest of the client throughout any proceedings in which he is engaged. In winding up proceedings, a single pleader must not represent two different creditors whose interests are known to conflict. A pleader must not accept a *vakalatnama* when he knows that he cannot act for his client throughout the proceedings A pleader in defending himself against charges of professional misconduct made certain statements. He was dealt with under the disciplinary jurisdiction for making them. It was contended in his behalf that the statements made by him in defence must be regarded as having been made by an accused and were therefore protected. *Held*, overruling the contention, that the pleader was writing to the Court as a pleader and was responsible as such for the statements made by him. GOVERNMENT PLEADER *v* BHAGUBAI DAYABHAI (1912)

I. L. R. 36 Bom. 606

2. ——— *Suspension of vakil from practising—Functions of Pleader and duty to the Court and to client—Rule 95 of Appellate Side rules of Madras High Court—Non-payment by vakil of printing charges for appeal though paid to him by client—Misconduct of vakil in management of appeal—Letters Patent of High Court, s. 10—Legal Practitioners' Act (XVIII of 1879)—S. 13.* Under s 95 of the Appellate Side rules of the Madras High Court, pleaders "are responsible to the Registrar for all translations and printing charges incurred by him on their behalf." To that extent, therefore, the vakil must co-operate in the conduct of the suit with the Registrar, and with the Court under those regulations; and vakils have also the general function applicable not only to the bar in general but also to solicitors at large, that they must in the conduct of all suits entrusted to them co-operate with the Court in the orderly and pure administration of justice. In a proceeding in the High Court to restore an appeal which had been struck off for non-payment of the printing charges, it appeared that the vakil for the appellant, though the money for that specific purpose had been received in his office from his client, had omitted to pay it to the Registrar, had not made any true and proper explanation to his client of the cause of the appeal being struck off but had allowed letters written by his clerks to go from his office to the client, and had even written one himself, which would lead him to believe that the appeal had been heard and dismissed in due course, and had also not given the Court, on the earliest possible opportunity any reason for his absence when the appeal was called on, except that other professional engagements had prevented him from being present, nor had he ever offered to the Court any explanation or apology concerning his conduct of the case nor expressed to the Court any regret for its effect. The vakil, after being called on to show cause why he should not be punished under the Letters Patent of the High Court, or the Legal Practitioners' Act (XVIII of 1879) for professional misconduct, was, whilst personally acquitted of any fraudulent or criminal act, suspended from practising for six months: *Held*, on an appeal to the Judicial Committee, that the vakil had in his acts, and omissions to explain, regret, or apologise for them, utterly failed to perform what his honour and duty to his client and to the Court made it incumbent upon him to do; and their Lordships while not interfering with his acquittance of direct and personal fraud, did not see their way to acquit him of conduct in the management of the appeal, and of his client's affairs, which caused the procedure of the Court to be the very opposite of what it should be, namely, responsible, orderly, and pure; and they were of opinion that there was "reasonable cause" under s. 10 of the Letters Patent, for the sentence pronounced by the High Court, which was justified both in its pronouncement, and the extent of the suspension. *In the matter of* KRISHNASWAMI AYYAR (1912)

I. L. R. 35 Mad. 543

PLEADINGS.

——— *Suit for cancellation of father's will brought by daughters—Plea of custom excluding daughters from inheritance—Custom not allowed to be raised in this suit.* On suit by the daughters of the testator for a declaration that a will alleged to have been executed by their father was a false and fraudulent document and not binding on them, the defendants set up a custom by virtue of which the daughters, but not apparently daughter's sons, were excluded from inheritance to their father's property. *Held*, that, as members of their father's family, the daughters, who, but for the will, on the death of their mother, would take the property of their father, had a cause of action which entitled them to bring the suit, and the issue whether or not a custom existed excluding them from inheritance was not a fit and proper issue to be determined in the present suit. RISALI *v.* BALAK RAM (1912)

I. L. R. 34 All. 351

PLEDGE.

See RES JUDICATA.

I. L. R. 36 Bom. 189

POLICE ACT (V OF 1861).

See ACT OF STATE.

I. L. R. 39 Calc. 615

POLYGAMY.

See BURMESE LAW—MARRIAGE.

I. L. R. 39 Calc. 492

POONA CANTONMENT.

See CANTONMENT TENURE.

I. L. R. 36 Bom. 1

POSSESSION.

See FRAUD . **I. L. R. 36 Bom. 185**

See MAHOMEDAN LAW — GIFT **I. L. R. 34 All. 465**

POSSESSORY SUIT.

See MAMLATDARS' COURTS ACT, BOMBAY, S. 23 . . **I. L. R. 36 Bom 123**

POSSESSORY TITLE.

See ESTOPPEL . **I. L. R. 34 All. 538**

PRACTICE.

See CHARGE, CANCELLATION OF **I. L. R. 39 Calc. 885**

See CIVIL PROCEDURE CODE, 1882, SS. 324 A, 272, 285 **I. L. R. 36 Bom. 519**

See CIVIL PROCEDURE CODE, 1908, SS 96, 100 . . **I. L. R. 36 Bom 360**

See CIVIL PROCEDURE CODE, 1908, S 97 . . **I. L. R 36 Bom. 536**

See CIVIL PROCEDURE CODE, 1908' O. XXI, R. 35 . **I. L. R. 34 All. 150**

See CIVIL PROCEDURE CODE, 1908, O. XLI, R 22 . **I. L. R. 34 All. 140**

See CIVIL PROCEDURE CODE, 1908, SCH. I, O. XXV, R. 1 AND O. XXXIII, R 1 **I. L. R. 36 Bom. 415**

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), S. 263. **I. L. R. 39 Calc. 931**

See CRIMINAL PROCEDURE CODE, S. 476 **I. L. R 34 All. 267**

See EXECUTION OF DECREE. **I. L. R. 34 All. 518**

See FRAUD . **I. L. R. 36 Bom. 185**

See HIGH COURT RULES, BOMBAY **I. L. R. 36 Bom. 418**

See LAND ACQUISITION. **I L. R. 39 Calc. 33**

See LOCAL INSPECTION. **I. L. R. 39 Calc. 476**

See MUNICIPAL ELECTION **I. L. R. 39 Calc. 754**

See MUNICIPALITY. **I. L. R. 34 All. 649**

See PRIVY COUNCIL, PRACTICE OF **I. L. R. 34 All. 57**

See PROBATE . **I. L. R. 39 Calc. 245**

See TRANSFER OF PROPERTY ACT, S 107. **I. L. R. 36 Bom. 500**

——— *Procedure—Rule to set aside consent decree.* A consent decree once duly obtained cannot be set aside by a rule, but if it is sought to impeach it upon grounds of fraud, that must be done in a regular suit. The only alternative which the law allows is an application

PRACTICE—*concld*

for review of judgment FATMABAI *v.* SONBAI (1911) . . . . **I. L. R. 36 Bom. 77**

PRAYERS.

See CIVIL PROCEDURE CODE, 1908, S. 92. **I L. R. 36 Bom. 168**

PRE-EMPTION.

COL.

1. CUSTOM 284
2. PRE-MORTGAGE 284
3. RIGHT OF PRE-EMPTION . . 284

See LETTERS PATENT, S. 10. **I. L. R. 34 All. 13**

See MAHOMEDAN LAW—PRE-EMPTION **I. L. R. 39 Calc. 915** **I. L. R. 36 Bom. 144**

1. CUSTOM.

——— *Custom—Wajib-ul-arz—Owner of isolated revenue free plots—Evidence of custom.* The pre-emptive clause of a *wajib-ul-arz* contained the following provisions :—"If the owner of a share wish to sell it, he shall do so first to his near relation, who may be a co-sharer in the zamindari, and in case of his refusal to anyone he likes." *Held*, that this by itself was not sufficient evidence of a custom giving owners of isolated revenue free plots of land in the village a right to pre-empt. MAWASI *v.* MUL CHAND (1912) **I. L. R. 34 All. 434**

2. PRE-MORTGAGE.

——— *Pre-emption (pre-mortgage)—Joint usufructuary mortgage—Further simple mortgage on share of one mortgagor in favour of same mortgagee — What amount the claimants of the right to pre-mortgage are liable to pay.* Certain persons made a joint usufructuary mortgage of their property. On the same day one of them executed a deed by way of a further charge, or simple mortgage, of his share in favour of the same mortgagee. In a suit for pre-mortgage, of his share in this second mortgagor it was *held* that the plaintiffs were not liable to pay the sum secured by the deed of further charge which was a separate and independent transaction, but were entitled to pre-mortgage upon paying such amount of the mortgage debt as was proportionate to the share of the said mortgagor. KALLA *v.* HARGIAN (1912) **I. L. R. 34 All. 416**

3. RIGHT OF PRE-EMPTION.

1. ——— *Personal right—Transfer—Transfer of Property Act (IV of 1882), s. 6.* The right of pre-emption is a purely personal right which cannot be transferred to any one except the owner of the property affected thereby. JASUDIN *v.* SAKHARAM GANESH (1911). **I. L. R. 36 Bom. 139**

PRE-EMPTION—*concld.*

3. RIGHT OF PRE-EMPTION—*concld.*

2. ——— *Mahomedan law —Demand made "on the premises"—Demand made in the abadi which was part of the premises sold* Where a person claiming pre-emption in respect of a certain zemindari share proved that he had made the demand with witnesses while sitting on his *chabutra* in the *abadi*, which formed part of the premises sold, it was *held* that the demand of pre-emption was a good demand made "on the premises" within the meaning of the Mahomedan law *Kulsum Bibi* v *Faqir Mohammad Khan, I L R 18 All 298*, followed MUHAMMAD USMAN *v.* MUHAMMAD ABDUL GHAFUR (1911) . . . . . **I. L. R. 34 All. 1**

3. ——— *Mahomedan law —Talab-i-mawasibat* Where a person immediately on hearing of the sale of a house exclaimed "*mera hak shafa hai*" and without any delay took the price and brought it to the vendee and claimed the house · *Held*, that the expressions used by him coupled with the circumstances constituted a sufficient first demand. *Muhammad Abdul Rahman Khan* v. *Mahammad Khan, 8 All L. J 270*, distinguished MUHAMMAD NAZIR KHAN *v* MAKHDUM BAKHSH (1911) **I. L. R. 34 All. 53**

4. ——— *Wazib-ul-arz—Custom—effect of joining in the purchase a co-sharer having an inferior right* The vendee in a suit for pre-emption having equal rights with the pre-emptor. disables himself from resisting a suit for pre-emption as much by associating with himself in the purchase another co-sharer whose rights are inferior to those of the pre-emptor as by associating with himself a stranger. GUPTESWAR RAM *v.* RATI KRISHNA RAM (1912) **I. L. R. 34 All. 542**

5. ——— *Conditional decree —Decretal amount deposited in Court—Decree enhanced in appeal—Additional payment made not covering amount withdrawn as costs.* A successful plaintiff pre-emptor deposited in Court the amount of the decree in his favour, but subsequently withdrew therefrom the amount of the costs decreed in his favour On the amount payable being enhanced on appeal, he paid into Court the difference between the original and appellate decrees: *Held*, that the decree had been fully complied with. *Gopal Saran* v. *Ishri, I. L R. 6 All 351, Balmukand* v. *Pancham, I. L R 10 All. 400, Parmanand Raot* v *Gobardhan Sahai, I. L R. 28 All 676*, and *Bechai Singh* v. *Shami Nath, 8 All. L. J. Notes, p 27*, followed. ALI HUSAIN *v.* AMIN-ULLAH (1912) **I L. R. 34 All. 596**

PREJUDICE.

See LOCAL INSPECTION **I. L. R. 39 Calc. 476**

PRELIMINARY DECREE.

See CIVIL PROCEDURE CODE, 1908, S. 97 **I. L. R. 36 Bom. 536**

PRE-MORTGAGE.

See PRE-EMPTION **I. L. R. 34 All. 416**

PRESENTATION.

See REGISTRATION ACT (III OF 1877), S 32 . **I. L. R. 34 All. 355**

PRESIDENCY MAGISTRATES, COURTS.

——— *Presidency Magistrates' Courts, jurisdiction of, inter se—Transfer, High Court has power of, from Court of Chief Presidency Magistrate to Court of another Presidency Magistrate —Criminal Procedure Code (Act V of 1898), s 21, cl, (2); 526, cl (ii), Charter Act (1865), s 15.* The Court of the Chief Presidency Magistrate and those of the other Presidency Magistrates are "Courts of equal jurisdiction" within the meaning of s. 526, cl (ii), Criminal Procedure Code (Act V of 1898). The High Court has power to transfer a case from the file of the Chief Presidency Magistrate to that of another Presidency Magistrate. *In re* VENKATASWARA SASTRI (1912) **I. L. R 35 Mad 739**

PRESIDENCY SMALL CAUSE COURTS ACT (XV OF 1882).

——— **s. 38**—*New trial, power of Court to order—Judgment against weight of evidence* S 38 of the Presidency Small Cause Courts Act (XV of 1882) places no limitation upon the power of the Court to order new trial in a matter when the judgment is manifestly against the weight of evidence; such power is not restricted to questions of law only. *Sassoon* v. *Harry Das Bhukut, 1 C. W. N. 44*, relied on SMIDT *v* RAM PROSAD (1911) . . . **16 C. W. N. 25**

PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909).

——— **ss. 9** (*e*), **10**—*Partnership debt—Attachment of property in execution of a joint decree against partner—Property claimed on behalf of an endowment—Enquiry as to whether property attached was really judgment-debtors, if essential—General Clauses Act (X of 1897), s. 13—Act or default, if to be personal of person sought to be adjudicated—Delay in applying for annulment* S 9 (*e*) of the Presidency Towns Insolvency Act requires that the act or default which amounts to an act of insolvency must be a personal act or default of the particular individual or in certain circumstances of his agent. Where properties alleged to belong to three judgment-debtors remained under attachment in execution of a joint decree against them for more than 21 days: *Held*, that this alone could not be relied on as an act of insolvency on the part of *H*, one of the co-judgment-debtors when, in the execution proceeding, claim was laid to what was alleged to be his share of the property on behalf of an endowment, and that claim was pending when the adjudicating order was made against him and the other co-judgment-debtors. On an application by *H* for annulment of the adjudication: *Held*, that the above act of insolvency on the part of

PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909)—*concld.*

——— s. 9—*concld.*

his co-judgment-debtors could not be regarded as an act of insolvency on the part of *H*. *Held*, that it was necessary to inquire whether the property attached was in fact the applicant's. An objection that the application for annulment was not made till after the lapse of a considerable time, having been raised for the first time on appeal: *Held*, that there being no bar of limitation in the matter, this objection taken at this late stage should not be entertained HARISH CHANDRA MUKERJEE *v* THE EAST INDIA COAL CO., LD. (1912) . . . . **16 C. W. N. 733**

PRESIDING OFFICER.

——— absence of—

See SALE IN EXECUTION OF DECREE. **I. L. R. 39 Calc. 26**

PRESUMPTION.

See AGRA TENANCY ACT (II OF 1901), SS. 166, 201 . **I. L. R. 34 All. 250**

See EVIDENCE ACT (I OF 1872), S. 108. **I. L. R. 34 All. 36**

See HINDU LAW—JOINT FAMILY PROPERTY . . **I. L. R. 36 Bom. 275**

See HINDU LAW—PARTITION. **I. L. R. 36 Bom 379**

See MORTGAGE . **I. L. R. 34 All. 102**

See REGISTRATION ACT (III OF 1877), SS. 32, 60, 75 . **I. L. R. 34 All. 253**

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 101 . **I. L. R. 34 All. 268**

PREVIOUS ENJOYMENT.

See LIGHT AND AIR. **I. L. R. 39 Calc. 59**

PRIMOGENITURE.

See HINDU LAW—INHERITANCE. **I. L. R. 34 All. 65**

See KUNJPURA, STATE OF. **I. L. R. 39 Calc. 711**

PRINCIPAL AND AGENT.

See AGRA TENANCY ACT (II OF 1901), S. 194 . . **I. L. R. 34 All. 98**

See CIVIL PROCEDURE CODE, 1908, S. 20 (*c*) . **I. L. R. 34 All. 49**

See COMPANY . **I. L. R. 36 Bom. 564**

See CONTRACT ACT (IX OF 1872), S. 235. . . **I. L. R. 34 All. 168**

1. ——— *Contract—Undisclosed principal—Contract Act (IX of 1872), ss. 230 (2), 236.* To enable an agent to sue on a contract under s. 230 (2) of the Contract Act, there must in fact have been a principal, though undisclosed, for whom he was acting in entering into the contract. Where a person in entering into a contract purported to act as agent for an undisclosed principal, but in fact no such principal existed, and the person was in reality acting on his own account, he is debarred from suing on the contract by s. 236 of the Contract Act. RAMJI DAS *v*. JANKI DAS (1912) **I. L. R. 39 Calc. 802**

PRINCIPAL AND AGENT—*concld.*

2. ——— *Limitation Act (XV of 1877), Sch. II, Arts. 89, 115, 116—Accounts, suit for, against sons of gomastha—Covenant to furnish annual accounts—Neglect to do so, if refusal—Suit by co-sharer for accounts of his share, if lies.* A suit for money found due on an account and a suit for an account are really one and the same thing. *Shib Chandra* v. *Chandra Narain, I.C. L. J. 232*: *I. L. R. 32 Calc 719*, followed. Such a suit lies on the death of an agent against his legal representatives, *Lawless* v. *The Calcutta Landing and Shipping Co., Ld., I. L. R. 7 Calc. 627, Jogesh Chandra* v. *Benode Lal Ray, 14 C. W. N 23*, followed. *Held* (COXE, *J.*, *dubitante*), that a suit for accounts not against the agent personally but against his legal representative, is governed by Art. 115 or Art. 116 of the Limitation Act and not by Art. 89. The objection that a co-sharer cannot sue the *gomastha* of all the co-sharers for the accounts of his share only does not apply where the remaining co-sharers have been made parties defendants and a decree passed for an account of the whole agency *Quœre*: Whether, when there is a covenant by the agent to furnish accounts year by year, the neglect on the part of the agent to furnish the accounts in respect of any particular year amounts to "refusal to render accounts" within the meaning of Art. 89. *Quœre*: Whether, where there is such a covenant, a suit against an agent for accounts of particular years when the agent has neglected to furnish accounts, or for the sum found due thereon, can be regarded as a suit for compensation for the breach of a contract as contemplated by Arts. 115 and 116 of the Limitation Act. JHAPPAJHANESSA BIBI *v*. BAMA SUNDARI CHOUDHURANI (1912) **16 C. W. N. 1042**

PRIOR AND SUBSEQUENT INCUMBRANCERS.

See MORTGAGE . **I. L. R. 34 All. 102**

PRIOR MORTGAGE.

——— extinguishment of—

See MORTGAGE . **I. L. R. 39 Calc. 527**

PRIOR AND SUBSEQUENT MORTGAGES.

See MORTGAGE. **I. L. R. 34 All. 323, 606**

PRIORITY.

See REGISTRATION ACT (III OF 1877 S. 50 . . **I. L. R. 34 All. 63**

PRIVITY OF CONTRACT AND ESTATE.

See JURISDICTION.

I. L. R. 39 Calc. 739

PRIVY COUNCIL.

See PRIVY COUNCIL, PRACTICE OF.

——— *Application for leave to appeal—Limitation—Admissibility of appeal filed after six months of the judgment—Time for taking copy of judgment and decree—Limitation Act (IX of 1908), s 12; Sch. I, Art 179* Clause (2) of s 12 of the Limitation Act, 1908, applies to an application for a certificate under O XLV of the Code of Civil Procedure EASTERN MORTGAGE AND AGENCY CO, LD. *v.* PURNA CHANDRA SARBAGNA (1912) . **I. L. R. 39 Calc. 510**

PRIVY COUNCIL, PRACTICE OF.

——— *Point of law as a ground of appeal which had not been dealt with by the courts below—Appeal heard ex parte.* It is contrary to the practice of the Judicial Committee to allow a point to be raised on appeal before them which had not been discussed in the Courts below, and on which their Lordships have not got the assistance of those Courts JIT SINGH *v* MAHARAJ SINGH (1911) . . . **I. L. R. 34 All. 57**

PROBATE.

——— *Will—Standard of proof—Testamentary capacity—Evidence as to execution—Presumption—Expert evidence, relevancy and weight of—Practice—Succession Act (X of 1865), ss 46, 48, 50—Evidence Act (I of 1872), ss 3, 10, 45, 101, 135.* The standard of proof to establish a will required by the Indian Statutes, is that of the prudent man and not an absolute or conclusive one The doctrine in *Tyrrell* v *Painton*, [1894], *P 151*, and *Barry* v *Butlin*, *2 Moo P C 480*, discussed *Shama Churn Kundu* v *Khetromoni Dasi*, *I L R 27 Calc 521; L R 27 I. A 10*, referred to. The presumption against misconduct exists in a Civil case, though it may be rebutted by a lower standard of proof than that in a criminal trial *Cooper* v *Slade*, *6 H L. Cas 746*, and *Devine* v *Wilson*, *10 Moo. P. C 502*, referred to The admissibility, relevancy and weight of the evidence of experts, discussed *Per* WOODROFFE, *J*—If the cross-examining counsel, after putting a paper into the hands of a witness, merely asks him some question as to its general nature or identity, his adversary will have no right to see the document, but if the paper be used for the purpose of refreshing the memory of the witness, or if any question be put respecting its contents or as to the handwriting in which it is written, a sight of it may then be demanded by the opposite counsel. *Peck* v. *Peck*, *21 L T R 670*, referred to. JARAT KUMARI DASSI *v.* BISSESSUR DUTT (1911)

I. L. R. 39 Calc. 245

PROBATE AND ADMINISTRATION ACT (V OF 1881).

——— **s. 37—**

——— *Mohunt of math—Death—Application by claimant to office for letters of administration—Trust estate—Beneficiary—Shebait and idol, relation of.* A mohunt is not the owner of the property of the *math*, and on his death a person claiming to be his successor in office cannot apply under Act V of 1881 for letters of administration in respect of the *math* property. S 37 of the Act is intended to apply only to property in which the deceased person had ownership so as to constitute it a portion of his estate although he held it in trust. *Ranjit Singh* v. *Jagannath Prosad Gupta*, *I. L R. 12 Calc. 375*, distinguished. MOHUNT JIB LAL GIR *v* MOHUNT JAGA MOHAN GIR (1898) . . . . **16 C. W. N. 798**

——— **s. 50—**

1. ——— *Revocation of grant—"Just cause," mal-administration if—Quarrels between co-administrators, making grant useless and inoperative, if ground for annulment.* Mal-administration is not under s. 50, Expl. (*4*), of the Probate and Administration Act, a just cause for revocation of probate. *Annoda Prosad* v *Kalikrishna*, *I L R 24 Calc 95*, followed. The words "become useless and inoperative" in s 50, Expl (*4*), of the Act imply the discovery of something which if known at the date of the grant would have been a ground for refusing it, *e g*, the discovery of a later will or codicil or a subsequent discovery that the will was forged or that the alleged testator was still living *Bal Gangadhar Tilak* v. *Sakwarbai*, *I. L. R 26 Bom. 792*, approved One of two joint administrators applied for the revocation of the grant to the other on the ground that in consequence of quarrels between them it had become impossible to carry on the administration and the grant had in this way become inoperative and useless: *Held*, that this was no ground for revoking the grant. GOUR CHANDRA DAS *v* SARAT SUNDARI DASSYA (1912) . . . . **16 C. W. N 880**

2 ——— *Grant, revocation of—Creditors' rights to contest Will propounded in fraud of creditors—Order holding applicant his right, if appealable—Interlocutory order* Where eight years after the death of *B* one of his sons *L* obtained letters of administration with a copy annexed of an alleged will left by *B* which, if genuine, would deprive another son *S*, who had meanwhile become heavily involved in debt, of a very large share of his inheritance: *Held*, that the creditors of *S* were entitled to apply for revocation of the will, their application being based on the ground that the probate had been obtained in fraud of creditors *Sheikh Azim* v. *Chandra Nath Namdas*, *8 C. W. N. 748*, *Nilmoni Singh Deo* v. *Umanath Mookerjee*, *I L. R 10 Calc. 19*, *Kishan Dai* v. *Satyendra Nath Dutt I. L. R. 28 Calc. 441*, referred to *Semble* No appeal lay from an order of the trial judge holding that the creditors had *locus standi* to contest the will, the same being merely interlocutory *Sheikh Azim* v. *Chandra Nath Namdas*, *8 C. W. N. 748*, *Abhiram Das* v. *Gopal*

PROBATE AND ADMINISTRATION ACT (V OF 1881)—*concld.*

——— s. 50—*concld.*

Das, I. L. R. 17 Calc 48, referred to. LAKHI NARAIN SHAW *v* MULTAN CHAND DAGA (1912). **16 C. W. N. 1099**

——— ss. 78, 79, 86—

See ADMINISTRATION BOND **I. L. R. 39 Calc. 563**

——— ss. 79, 80—*Administration bond—Assignee not enforcing bond—Second assignment if valid—Order, if appealable* An administration bond can be assigned by the District Judge upon conditions, under s. 79 of the Probate and Administration Act. But there is no provision in the law authorising the District Judge to assign it again while the first assignment is still in force. Where the first assignee having come to terms with the administrator, other persons interested in the estate applied to have the bond transferred to them and the application was granted: *Held*, that no appeal lay from the order, but the order being without jurisdiction could be set aside in revision. *Brojo Nath Pal* v. *Dasmoni Dasi, 2 C. L. R. 589; Abhiram Das* v. *Gopal Dass, I. L. R. 17 Calc. 48,* followed. *Umacharn* v. *Muktakeshi, I. L. R. 28 Calc. 149,* commented on. SHEIKH KALIMUDDIN *v.* MUSSTT. MAHURNI (1912). **16 C. W. N. 662**

——— s. 89—

See MAHOMEDAN LAW—PRE-EMPTION. **I. L. R. 36 Bom. 144**

——— s. 112—

See LEGACY . **I. L. R. 36 Bom. 111**

PROCEDURE.

See CIVIL PROCEDURE CODE, 1908, O. XVII, R. 3; O. IX, R. 4 **I. L. R. 34 All. 123**

See CIVIL PROCEDURE CODE, 1908, O. XXI, R. 23 . **I. L. R. 34 All. 612**

See CIVIL PROCEDURE CODE, 1908, O. XLI, R. 33 . **I. L. R. 34 All. 32**

See CRIMINAL PROCEDURE CODE, SS. 107, 145 . . **I. L. R. 34 All. 449**

See CRIMINAL PROCEDURE CODE, S. 250. **I. L. R. 34 All. 354**

See OFFENCE COMMITTED ON THE HIGH SEAS . . **I. L. R. 39 Calc. 487**

See PENAL CODE (ACT XLV OF 1860), SS. 182, 211 . **I. L. R. 34 All. 522**

——— *Right to set aside consent decree.* A consent decree once duly obtained cannot be set aside by a rule, but if it is sought to impeach it upon grounds of fraud, that must be done in a regular suit. The only alternative which the law allows is an application for review of judgment. FATMABAI *v.* SONBAI (1911) **I. L. R. 36 Bom. 77**

PROCESSION.

See HIGHWAY . **I. L. R. 35 Mad. 28**

PROCLAMATION OF SALE.

See CIVIL PROCEDURE CODE, 1882, SS. 287, 293 . . **I. L. R. 36 Bom. 329**

See SALE IN EXECUTION OF DECREE. **I. L. R. 39 Calc. 26**

PROFITS, SUIT FOR.

See AGRA TENANCY ACT (II OF 1901), SS. 166, 201 . **I. L. R. 34 All. 250**

PROHIBITORY ORDER.

——— *Jurisdiction—Execution of decree—Civil Procedure Code (Act V of 1908), O. XXI, r. 46—Competency of Court to issue prohibitory order outside its jurisdiction restraining a person from paying a debt due to the judgment-debtor.* It is not competent to a Court, in execution of a decree for money to attach, at the instance of the decree-holder, a debt payable to the judgment-debtor outside the jurisdiction, by a person not resident within the jurisdiction of that Court. BEGG, DUNLOP & Co. *v.* JAGANNATH MARWARI (1911) . . **I. L. R. 39 Calc. 104**

PROMISSORY NOTE.

See EVIDENCE ACT (I OF 1872), S. 91. **I. L. R. 34 All. 158**

PROOF.

——— standard of—

See PROBATE . **I. L. R. 39 Calc. 245**

1. ——— *Per* WOODROFFE, *J.*—A Court cannot assume that a document was proved from the refusal of opposing counsel to cross-examine to it. The latter is entitled to wait until the Court ruled whether the document was proved or not. *In the goods of* GOPESSUR DUTT (1911) . . **16 C. W. N. 265**

2. ——— *Title, evidence of, direct proof when not available—Conduct and admissions of defendant as proof of title—Mulki papers, evidentiary value of—Registers kept under Reg. VIII of 1800, entries in—Statements against proprietory interest—Statements in road-cess returns as to character of interest—Burden of proof, when shifted—Effect of erroneous statement as to nature of tenure by unauthorised person—Purchase at execution sale held under s 124 (Beng. Act I of 1879), limited to interests actually sold.* When owing to lapse of time and other causes direct evidence of title, *e.g.*, a *sanad* or grant, is not available, it is enough for the plaintiff to establish a *primâ facie* case, if the evidence on which it is based is corroborated by the conduct and admissions of the defendant or his predecessors-in-interest, or unrebutted by any positive evidence which can be relied on KALI SANKAR SAHAI *v.* PRATAP UDAI NATH SAHI DEO (1911) **16 C. W. N. 683**

PROSECUTION WITNESSES.

——— cross-examination of—

See CHARGE, CANCELLATION OF.
I. L. R. 39 Calc. 885

PROTECTION OF JUDICIAL OFFICERS.

See TRESPASS . I. L. R. 39 Calc. 953

PROTHONOTARY.

See HIGH COURT RULES, BOMBAY.
I. L. R 36 Bom. 418

PROVINCIAL INSOLVENCY ACT (III OF 1907).

——— s. 15—*Debtor's application for insolvency not made bonâ fide—Adjudication, if may be refused. Quœre:* Whether if upon the facts before the Court it is clear to the Judge that the debtor applying for insolvency is not an insolvent he is bound to adjudicate him an insolvent. *Girwardhari* v. *Joy Narain, I. L. R. 32 All. 645, Uday Chand Maity* v. *Ram Kumar Khara, 15 C. W. N. 213, Sheikh Samiruddin* v. *Srimati Kadumoyi Dasi, 15 C. W. N. 244,* and *Kali Kumar Das* v. *Gopi Krishna Ray, 15 C. W. N. 990,* referred to. SHEIKH GOLAM RAHMAN *v.* SHAIKH WAHED ALI (1912)
16 C. W. N. 853

——— s. 16—*Secured Creditor—Landholder and tenant—Suit for arrears of rent—Declaration of insolvency in force at date of suit.* A land-holder is not, as regards an agricultural tenant, a secured creditor within the meaning of s. 16 (5) of the Provincial Insolvency Act, 1907. Although he possibly may be in a position to distrain even whilst a declaration of insolvency is in force, he cannot without the leave of the Court sue for arrears of rent. RAGHUBIR SINGH *v.* RAM CHANDAR (1911) . . . . I. L. R. 34 All. 121

——— ss. 16, 31—*Civil Procedure Code, 1908, O. XXXIV, r. 6—Application for decree over against two judgment-debtors one of whom had been declared insolvent.* Where one of two mortgagors against whom a decree under O XXXIV, r. 6, of the Code of Civil Procedure was otherwise obtainable had been declared an insolvent under the provisions of the Provincial Insolvency Act, 1907, but the other had not: *Held,* that the decree-holders could not be granted a decree over as against the insolvent, but could only prove their debt in the insolvency proceedings. *Barter* v. *Dubeux and Company, L R. 7 Q. B. D. 413,* referred to. MAMRAJ *v.* BRIJ LAL CHAKRAVARTI (1911) . . . . I. L. R. 34 All. 106

——— ss. 16, 34—*Execution of decree against insolvent during pendency of insolvency proceedings—Right of decree-holder in respect of property attached and sold and money attached before adjudication.* Whilst proceedings in insolvency under the Provincial Insolvency Act 1907, were pending, certain immoveable property of the insolvent was attached and sold in execution of a decree against him, and the proceeds deposited

PROVINCIAL INSOLVENCY ACT (III OF 1907)—*contd*

——— s. 16—*concld.*

in Court for the benefit of the decree-holder. The decree-holder also attached certain moneys which had been paid into Court to the credit of the insolvent but up to the date of the order of adjudication had taken no further steps to possess himself thereof. *Held,* that the decree-holder was entitled as against the receiver to the benefit of the proceeds of execution of his own decree, but not to the money of the insolvent which he had attached. *Peacock* v. *Madan Gopal, I. L. R. 29 Calc. 428,* followed. SRI CHAND *v.* MURARI LAL (1912)
I. L. R. 34 All. 628

——— ss. 24, 26—*Insolvency—Application by a creditor to have his name entered in the schedule of creditors—Right of the scheduled creditors to make objections—Revision.* Creditors whose names are already in the schedule prepared under s. 24 of the Provincial Insolvency Act, 1907, are entitled to be heard before the debt of a creditor who comes in at the last minute under s. 24 (3) of the Act is entered in the schedule. ALLAHABAD BANK, LIMITED *v.* MURLIDHAR (1912)
I. L. R. 34 All. 442

——— ss. 43, 46—

See CIVIL COURTS ACT, 1887, ss 8, 20
I. L. R. 34 All. 383

——— s. 46 (4)—*Appeal—Limitation—Application of general provisions of the law of limitation—Limitation Act (IX of 1908), ss 12 and 29.* The Provincial Insolvency Act is a special law within the meaning of s. 29 of the Indian Limitation Act, but, inasmuch as it is not in itself a complete Code, there is nothing to prevent the application thereto of the general provisions of the Indian Limitation Act. Such general provisions do not "affect or alter" the period prescribed by a special law, but only the manner in which that period is to be computed. *Jugal Kishore* v. *Gur Narain, I. L. R. 33 All. 738,* overruled. *Beni Prasad Kuari* v. *Dharaka Rai, I. L. R. 23 All. 277, Joti Sarup* v. *Ram Chandar Singh, All. Weekly Notes, 1902, 34,* and *Veeramma* v. *Abbiah, I. L. R. 18 Mad. 99,* followed. *Poulson* v. *Modhoosoodun Paul Chowdhry, 2 W. R, Act X, 21, Unnoda Persaud Mookerjee* v. *Kristo Coomar Moitro, 15 B. L. R. 60 note, Nagendra Nath Mullick* v. *Mathura Mohun Parhi, I. L. R. 18 Calc. 368, Girija Nath Roy Bahadur* v. *Patane Bibee, I. L. R. 17 Calc. 263, Bihari Loll Mookerjee* v. *Mungolanath Mookerjee, I. L. R. 5 Calc. 110, Golap Chand Nowluckha* v. *Krishto Chundar Das Biswas, I. L. R. 5 Calc. 314, Nijabutoola* v. *Wazir Ali I. L. R. 8 Calc. 910, Khetter Mohun Chuckerbutty* v. *Dinabashi Shaha, I. L. R 10 Calc. 265, Guracharya* v. *President of the Belgaorum Town Municipalities, I. L. R. 8 Bom. 529, Kullayappa* v. *Lakshmipathi, I L. R. 12 Mad., 467, Abdul Hakim* v. *Latif-un-nessa Khatun, I. L. R. 30 Calc. 532,* and *Suraj Bali*

PROVINCIAL INSOLVENCY ACT (III OF 1907)—*concld.*

——— s. 46 (*4*)—*concld*

Prasad v. *Thomas, I. L. R. 28 All. 48*, referred to. DROPADI *v.* HIRA LAL (1912) **I. L. R. 34 All. 496**

PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887).

——— s. 25—*Jurisdiction of High Court—Revision—Refusal of leave to amend plaint Held*, that the refusal on the part of a Court of Small Causes of permission to amend a technical defect in the plaint amounted to an irregularity such as would justify the interference of the High Court in revision under s 25 of the Provincial Small Cause Courts Act, 1887. HEYDORN AND COMPANY *v* MUHAMMAD SHAFI (1912) **I. L. R. 34 All. 348**

——— Sch. II, Art. 31—

See TRESPASS . **I. L. R 35 Mad. 726**

——— Sch II, Art. 35—*sub. cl (l)—Threat to assault—"Injury to the person"—Exemption from the cognizance of the Court of Small Causes.* A suit to recover damages from the defendant who ran after the plaintiff with a shoe in hand threatening to beat him and using abusive language, but did not actually touch the plaintiff's person, is a suit for "injury to the person" within the meaning of clause 35, sub-clause (*l*) of the second schedule of the Provincial Small Causes Courts Act (IX of 1887), and is not within the cognizance of the Small Cause Court. GOVIND BALKRISHNA *v* PANDURANG VINAYAK (1912) **I. L. R. 36 Bom. 443**

PUBLIC DEMANDS RECOVERY ACT (BENG. I. OF 1895).

——— sale under—

See OCCUPANCY HOLDING **16 C. W. N. 351**

PUBLIC GAMBLING ACT (III OF 1867).

——— s. 5—*Jurisdiction—Power to issue search warrant—"Officer invested with the full powers of a Magistrate"—Sub-divisional officer issuing warrant for search outside his sub-division. Held*, that a search warrant issued under s 5 of the Public Gambling Act, 1867, by a first class Magistrate was not invalid by reason of the fact that the house to be searched was situated outside the limits of the *tahsils* in respect of which such Magistrate had been appointed sub-divisional officer EMPEROR *v.* ABBU SINGH (1912) . . . . **I. L. R. 34 All. 597**

——— s. 12—"*Mere game of skill*"—*Game of chance. Held*, that a game which is in fact only to a very slight extent a game of skill and almost entirely a game of chance, is not a game which is excluded by reason of s. 12 of the Gambling Act, 1867, from the previous provisions

PUBLIC GAMBLING ACT (III OF 1867)—*concld.*

——— s. 12—*concld.*

of that Act. *Hari Singh* v. *King-Emperor, 6 C. L J 708*, distinguished EMPEROR *v.* AHMAD KHAN (1911) . . **I L. R. 34 All. 96**

PUBLIC NUISANCE.

See CRIMINAL PROCEDURE CODE, 133 **I. L. R. 34 All. 345**

PUBLICATION.

——— proof of—

See SEDITION.

I. L. R. 39 Calc. 522, 606

PUNJAB RULING CHIEFS.

See KUNJPURA, STATE OF **I L. R. 39 Calc. 711**

PURCHASE FREE OF INCUMBRANCES.

See SALE FOR ARREARS OF REVENUE **I. L. R. 39 Calc. 377**

PURCHASER, PENDENTE LITE

See MESNE PROFITS **I. L. R. 39 Calc. 220**

PUTNI REGULATION (VIII OF 1819).

——— s. 14—*Irregular sale under, if voidable or void—Sale if may be impugned collaterally—Limitation Act (XV of 1877), Sch II, Art. 12* Where a Putni has been sold under the Putni Regulation and no suit has been brought under s 14 of that Regulation to set aside that sale. *Held*, that the sale cannot be impugned as invalid collaterally by way of defence in a suit brought by a purchaser of the putni for ejectment Irregularity in the service of notices in such sale does not make the sale a nullity Irregular sales under the Regulation are voidable and not void and they can only be avoided by the procedure laid down in the Regulation and within the time allowed for such suit by Art 12, Sch II of the Limitation Act RAMSONA CHOWDHURI v. NAVA KUMAR SINGHA CHOWDHURI (1911) **16 C. W. N. 805**

——— s. 17 (*c*)—*Antecedent balances, if recoverable by resale of the tenure* Under the provisions of s 17, cl (*c*) of the Putni Regulation, arrears of rent for a period antecedent to the period to recover the rent of which the tenure had been sold, must be regarded as personal debts recoverable under the ordinary procedure for the recovery of debts and not by resale of the tenure. *Jagannath* v *Mohiuddin Mirza, I. L. R 37 Calc. 747*, followed *Peary Mohun Mukhopadhya* v. *Sreeram Chandra Bose, 6 C. W. N. 794*, dissented from. KHITISH CHANDRA ACHARYA CHOWDHURY *v.* KHULNA LOAN COMPANY, LTD. (1912) **16 C. W. N. 804**

R

RAILWAY.

See RAILWAY COMPANY.

See RAILWAYS ACT (IX OF 1890).

RAILWAY ADMINISTRATION.

——— liability of—

See "SHAWLS," MEANING OF.

I. L. R. 39 Cac. 1029

RAILWAY COMPANY.

See CARRIERS . **I. L. R. 39 Calc 311**

——— liability of—

See RAILWAYS ACT (IX OF 1890), S. 75.

I. L. R. 34 All. 656

——— *Goods consigned for carriage—Risk note, Form B—Company absolved from liability in all cases except negligence or dishonesty of its servants—Onus* Where goods were consigned to a Railway Company for carriage, the contract being embodied in a risk note, Form B, under which, in consideration of the Railway Company accepting a lower freight the consignor absolved the Railway Company from all liability for loss or damage to the goods, subject, however, to the proviso that the Company would be liable for loss due to wilful negligence on the part of their servants or due to thefts by its servants or agents: *Held*, that the onus lay on the person seeking to charge the Railway Company with damages for loss of goods to show that the case came within the proviso. SHEOBARUT RAM *v.* THE BENGAL NORTH-WESTERN RAILWAY CO (1912)

16 C. W. N. 766

RAILWAYS ACT (IX of 1890).

——— s. 47—

1. ——— *Rules "made" by a Railway Company, what are—Sanction of Government—Publication—General rules framed by Government* Rules adopted by a Railway Company though not originally prepared by it would satisfy the requirements of s. 47 of the Railways Act, if they were subsequently sanctioned by the Governor-General in Council and published in the Gazette of India *Hari Lal Sinha* v. *The Bengal-Nagpur Railway Co., 13 C. L. J 15, 15 C. W. N. 195*, referred to BENGAL-NAGPUR RAILWAY CO. *v.* RAMPROTAP GONESHAM DAS (1912)

16 C. W. N. 360

2. ——— *Rules made by Railway Company, validity of—Sanction of Government and publication.* Upon the finding of the Small Cause Court that the rules of the East Indian Railway Company in question regarding the recovery of demurrage charges from consignees of goods despatched by the Railway, were made, sanctioned, and published as prescribed by s. 47 of the Railways Act: *Held*, that there was no case for the exercise of the Court's power of

RAILWAYS ACT (IX OF 1890)—*contd.*

——— s. 47—*concld.*

revision with reference to the Small Cause Court's decision dismissing the suit for refund of demurrage charges paid. SURAJ MULL NAGAR MULL *v.* THE EAST INDIAN RAILWAY CO. (1912)

16 C. W. N. 359

——— s. 75—

——— *Goods referred to in s. 75 consigned on a "risk note"—Railway Company not liable for loss* Where a person chooses to send goods referred to in s. 75 of the Indian Railways Act on a "risk-note" Form instead of declaring them and paying the extra percentage demandable under the terms of the section he cannot hold the Railway Company by which such goods are sent responsible for the loss thereof NARAIN DAS *v* THE EAST INDIAN RAILWAY COMPANY (1912)

I. L. R. 34 All. 656

——— ss 75, 80—

See COMPENSATION.

I. L. R 34 All. 422

——— ss. 75, 80—

——— *Suit for compensation for loss of through-booked goods—Short delivery—Uninsured goods Held*, that where goods are booked for conveyance over more than one railway system the owner can only claim compensation for loss against a railway company other than the company with which they were booked, if it is shown that the loss occurred on the system of the company sued *Held*, also, that if goods, the insurance of which is obligatory, are packed uninsured with other goods, the insurance of which is not obligatory, no compensation is obtainable for the loss of either class of goods. *Pandlik Udaji Jadhav* v. *S. M. Railway Company, I. L. R 11 Bom. 827*, followed. GREAT INDIAN PENINSULA RAILWAY *v.* SHAM MANOHAR (1912) . **I. L. R. 34 All. 422**

——— s. 75. Sch. II (m)—

See "SHAWLS," MEANING OF

I. L. R. 39 Calc. 1029

——— s. 77—

——— *Notice of claim to Goods Superintendent, if sufficient—Irregular sale of left goods if conversion—Damage. Held*, that the notice of claim for loss of goods despatched by rail given in this case to the Goods Superintendent did not comply with the requirements of s. 77 and 140 of the Railways Act. *Quære*: Whether a failure to observe the provisions prescribed in the Railways Act with regard to sales of articles of which no delivery has been taken, would make the sale an act of conversion by the Railway. JANAKI DAS *v* THE BENGAL-NAGPUR RAILWAY CO. (1912) . **16 C. W. N. 356**

——— s. 125—

——— *Cattle left in charge of keepers allowed to stray on a railway line—Liability of owner.* The owner of cattle which have been

RAILWAYS ACT (IX OF 1890)—*concld.*

——— s. 125—*concld.*

allowed to stray upon a railway in consequence of the negligence of the person actually in charge of them on the owner's behalf is not liable to punishment under s. 125 (*1*) of the Railways Act, 1890. *Queen-Empress* v. *Andi, I. L. R. 18 Mad. 228*, followed. EMPEROR *v.* GUR PRASAD GIR (1911) . . . **I. L. R. 34 All. 91**

RATEABLE DISTRIBUTION.

See CIVIL PROCEDURE CODE, 1908, ss. 47, 73, O. XXI, R. 55.
I. L. R. 36 Bom. 156

RATIFICATION OF ORDER.

See HABEAS CORPUS.
I. L. R. 39 Calc. 164

RECEIPT.

See REGISTRATION ACT (XVI OF 1908), S. 17 (*2*) (xi) . **I. L. R. 34 All. 528**

See STAMP ACT (II OF 1899), S. 65.
I. L. R. 34 All. 192

RECEIVER.

See GHATWALI TENURE.
I. L. R. 39 Calc. 1010

See SALE . . **16 C. W. N. 394**

1. An agreement which would interfere with the work of a Receiver appointed by a Court should not be enforced as being opposed to public policy. FUZLUR RAHAMAN *v.* ANATH BANDHU PAL (1911) . . . . **16 C. W. N. 114**

2. ——— *Mortgage suit, Receiver if may be appointed in, after appointment of Receiver in partition suit amongst mortgagors—Foreclosure suit, Receiver if and when may be appointed in.* The appointment of a Receiver in a partition suit amongst the mortgagors, is no bar to the appointment of a Receiver in a subsequent suit by the mortgagee on his mortgage, as any possible conflict between the two Receivers, where the same Receiver has not been appointed in both suits, may easily be avoided. A mortgagee who has obtained a preliminary decree for foreclosure cannot at that stage ask for a Receiver of the property under mortgage, since he has no title to the profits until at least he obtains an order absolute for foreclosure and is then kept out of possession by the action of the judgment-debtors. KHUBSURAT KOER *v.* SARODA CHARAN GUHA (1911)
16 C. W. N. 126

3. ——— *Ghatwali tenure, income from, if may be attached—Receiver, if may be appointed for Ghatwali lands—Rents and profits not due at the date of appointment.* The rents and profits of a Ghatwali tenure may be attached in execution of a decree in the life-time of the Ghatwal though the estate itself cannot be attached *Kustoora Koomaree* v *Benode Ram, 4 W. R. Mis. 5, Surajmal* v. *Kristo Pershad, 10 C. W. N. cclx, Udoy Kumari* v. *Hari Ram, I. L. R. 28 Calc., 483, Raj Keshore* v. *Bunshidas, I. L. R. 23 Calc. 873*, considered. Where the lower Court in execution of a decree against the Ghatwal attached the Ghatwali estate, placed it under a Receiver and directed the tenants not to pay rents to any body other than the Receiver: *Held*, that, although the order of attachment of the estate was erroneous, the appointment of a Receiver was sanctioned by authority. *Quære:* Whether a Receiver may be appointed to collect rents and profits that have not accrued at the date of appointment. KESOBATI KOERI *v.* MOHAN CHANDRA MANDAL (1912)
16 C. W. N. 802
I. L. R. 39 Calc. 1010

RECONSTRUCTION.

See BUILDING . **I. L. R. 39 Calc. 84**

RECONVERSION.

See MAHOMEDAN LAW—BIGAMY.
I. L. R. 39 Calc. 409

RECORDED TENANT.

See LANDLORD AND TENANT.
I. L. R. 39 Calc. 903

RECORDS.

——— alteration of—

See SANAD, CONSTRUCTION OF.
I. L. R. 26 Bom. 639

RECTIFICATION OF REGISTER.

——— *Entry in the revenue register—Misunderstanding of an order—"Oversight"—Natural Justice—Land Revenue Code (Bom. Act V of 1879), ss. 109, 197.* Where an entry in the revenue register was due to a misunderstanding of a certain order: *Held*, that the cause of the error being of the same nature as 'oversight' falling within the description of errors in s. 109 of the Land Revenue Code (Bom. Act V of 1879), the rectification of the register, so as to bring it in accord with the order after hearing both parties, was not contrary to natural justice. It was a case in which the revenue officer concerned was authorized under s. 197 of the said Code to dispense with any judicial or quasi-judicial inquiry. WASUDEV LAKSHMAN *v.* GOVIND MAHADEV (1911)
I. L. R. 36 Bom. 315

REDEMPTION.

See BENGAL REGULATION NO. XV OF 1793 . . **I. L. R. 34 All. 261**

See CIVIL PROCEDURE CODE, 1908, S. 148, XXXIV, S. 8.
I. L. R. 34 All. 389

See LIMITATION ACTS (1877 AND 1908), ART. 134 . **I. L. R. 36 Bom. 146**

See MORTGAGE.
I. L. R. 34 All. 620, 659

See MORTGAGE—REDEMPTION.

REDEMPTION—*concld.*

——— **right to**—

See MORTGAGE . **I. L. R. 39 Calc. 828**

REGISTRATION.

See COMPANIES' ACT, ss. 28, 45, 61. **I. L. R. 36 Bom. 557**

See REGISTRATION ACT (III OF 1877), s. 32 . . **I. L. R. 34 All 355**

See REGISTRATION ACT (III OF 1877), ss. 32, 33 . . **I. L. R. 34 All. 331**

See REGISTRATION ACT (III OF 1877), ss. 32, 60, 75 . **I. L R 34 All. 253**

See REGISTRATION ACT (III OF 1877), s. 50 . . **I. L. R. 34 All. 631**

See REGISTRATION ACT (XVI OF 1908), s. 17 (2) (xi) . **I. L. R. 34 All. 528**

See REGISTRATION ACT (XVI OF 1908), ss. 73, 74, 77 . **I. L. R. 34 All. 165**

See TRANSFER OF PROPERTY ACT, s 107. **I. L. R 36 Bom. 500**

See TRUSTS ACT, s. 5. **I. L. R. 36 Bom. 396**

——— **suit for**—

See REGISTRATION ACT (XVI OF 1908), ss. 73, 74, 77 . **I. L. R. 34 All. 165**

——— **suit to compel**—

See REGISTRATION ACT (XVI OF 1908), ss. 36, 73, 77 . **I. L. R. 34 All. 315**

——— *Document—Variation of Terms—Registration Act (XVI of 1908), s. 17 (d).* A document which varies the amount to rent to be paid under an existing lease registered as required by s. 17 (*d*) of the Indian Registration Act, as also the incidents of such payments, namely, the date of payment and consequences of default of payment requires registration. *Durga Prasad Singh* v. *Rajendra Narain Bagchi, I. L. R. 37 Calc. 293,* approved, so far as it determines that a document embodying an agreement for reduction of rent under a previously existing lease registered, as required by s. 17 (*d*) of the Registration Act, requires registration. LALIT MOHAN GHOSH *v.* GOPALI CHUCK COAL COMPANY, LD. (1911) **I. L. R. 39 Calc. 284**

REGISTRATION ACT (III OF 1877).

——— **s. 3.**

See KABULIYAT **I. L. R. 39 Calc. 1016**

——— **ss 3, 17, 40**—

——— *Contract to sell—Agreement to lease—Evidence Act, s. 91.* An agreement to execute a sub-lease and to get it registered at a future date is a lease within s. 3 of the Indian Registration Act III of 1877 and is compulsorily registrable under cl (*d*) of s. 17. Such an agreement to grant a lease which requires registration affects immoveable property and cannot be received in evidence in a suit for specific performance of such agreement. It is immaterial whether possession has passed or not in accordance with the agreement. S. 49 of the Registration Act indicates that a document should not be received in evidence even where the transaction sought to be proved does not amount to a transfer of interest in immoveable property but has only created an obligation to transfer the property. NARAYANAN CHETTY *v.* MUTHIAH SERVAI (1910) **I. L. R. 35 Mad. 63**

REGISTRATION ACT (III OF 1877)—*contd.*

——— **ss. 3, 17, 40**—*concld.*

——— **s. 7**—

——— *Suit for registration of document—Limitation—Last day a holiday—Suit filed on re-opening of Court—Stare decisis—General Clauses Act (X of 1887), s. 77—General Clauses Act (I of 1897), s 10—Limitation Act (XV of 1877), s. 5.* Where a Registrar having refused to order the registration of a document on the 29th November, the plaintiff instituted a suit for the registration of the document under s. 77, Registration Act of 1877, on the 2nd January following, the Court being closed on the 29th of December and the following days until it re-opened on the 2nd January : *Held,* that in view of previous decisions of the Court and of the Legislative sanction impliedly accorded to the rule there laid down by the General Clauses Acts of 1887 and 1897, the suit should be held to have been properly instituted. *Mayer v. Harding, L. R. 2 Q. B. 410,* referred to. *Hossein Ally* v. *Donzelle, I. L. R. 5 Calc. 906. Shosee Bhusan* v. *Gobinda Chandra, I. L. R 18 Calc. 231, Peary Mohun* v. *Ananda Charan, I. L. R. 18 Calc. 631,* commented on. *Per D.* CHATTERJEE, *J.*—S. 5 of the Limitation Act has no application to suits under s. 77 of the Registration Act. AHAD BAKSH MOLLA *v* SHEIKH BAHAR ALI (1912) **16 C. W. N. 721**

——— **s. 32**—

——— *Registration—"Presentation"* Where the executants of a document which it is desired to register are present acquiescing in the handing over of the document to the Registrar for registration, the fact that the physical act of handing the document to the Registrar is performed by a person who is not authorised to 'present' the document for registration, will not render the presentation invalid. NATH MAL *v.* ABDUL WAHID KHAN (1912) **I. L. R. 34 All. 355**

——— **ss. 32, 33**—

——— *Registration—Evidence—Presumption of validity of registration—Presumption rebutted by evidence showing document to have been presented by an unauthorized person.* Although, when the validity of the registration of a document is in question after the lapse of a considerable period of time, it is to be presumed that the registration was carried out according to law, yet when there exists evidence which discloses a fatal defect in procedure, as, for instance, that the person who

REGISTRATION ACT (III OF 1877)— *contd.*

——— s. 32—*concld.*

presented the document for registration was not legally authorized to do so, the registration must be *held* to be invalid. Such a defect as presentation by an unauthorized person cannot be cured by subsequent admission of execution on the part of the executants. *Mohammad Ewaz* v. *Brij Lall*, *L. R. 4 I. A. 166*, and *Majib-unnissa* v. *Abdur Rahim*, *I. L. R. 23 All. 233*, referred to. *Wilaiti Begam* v. *Fazal Husain Khan*, *9 All. L. J. 148*, and *Ram Chandra Das* v *Farzand Ali Khan*, *I. L. R. 34 All. 253*, distinguished JAMBU PRASAD *v.* MUHAMMAD AFTAB ALI KHAN (1912) **I. L. R. 34 All. 331**

——— ss. 32, 60, 73—

——— Registration—Presentation—Endorsement of registering officer—Presumption—Evidence—Evidence Act (I of 1872), s 114 A document was presented to a Sub-Registrar for registration by a *karinda* of the person in whose favour it was executed. It was received for registration. Simultaneously with the presentation an application was made to summon the executants. They failed to appear, and the Sub-Registrar, considering that execution was not admitted, refused to register the document. The matter came up before the District Registrar by means of an application under s. 73 of the Registration Act, and the presence of the executants having been secured, the District Registrar ordered that the document should be registered The document was apparently then sent by the Registrar to the Sub-Registrar by whom it was registered. *Held*, that in the absence of evidence to the contrary it must be presumed that the *karinda* who presented the document was duly authorized in that behalf, and further that, even if the Registrar had in fact sent the document direct to the Sub-Registrar, instead of returning it to the person who had presented it for registration, this fact alone was not sufficient to invalidate the registration. *Mohammed Ewaz* v. *Brij Lall*, *L. R. 4 I A. 167*, referred to. *Mujib-un-nissa* v. *Abdur Rahim*, *I L. R 23 All 33*, and *Ishri Prasad* v. *Baij Nath*, *I. L R 28 All 707*, distinguished. RAM CHANDRA DAS *v* FARZAND ALI KHAN (1912) **I. L. R. 34 All. 253**

——— s. 50—

——— Registration—Mortgage—Priority between registered and unregistered deeds Property which was the subject of two unregistered mortgages of different dates was sold in execution of a decree on the latter of the two mortgages and purchased by the decree-holder, who afterwards sold it by an unregistered deed to Bal Kishan, who in turn sold it by a registered deed without making any mention of the prior unregistered mortgage. *Held*, that after such sale no suit would lie on the prior unregistered mortgage *Sobhagchand Gulabchand* v. *Bhaichand*, *I. L. R 6 Bom. 193*, *Baldeo Prasad* v. *Baldeo*, *All. Weekly Notes*,

REGISTRATION ACT (III OF 1877)— *concld.*

——— s. 50—*concld.*

1901, 112, and *Ram Lal* v. *Thakur Bachcha Singh*, *10 A. L. J., 114*, referred to. ISHRI PRASAD *v.* GOPI NATH (1912) . . **I. L. R. 34 All. 631**

REGISTRATION ACT (XVI OF 1908).

——— s. 2 (7)—

See KABULIYAT **I. L. R. 39 Calc. 1016**

——— s. 17 (2) (xi)—

——— Mortgage—Receipt for mortgage money—Registration. A receipt for money due upon a mortgage was given in the following terms :—" The bond is returned. No money remains due." *Held*, on suit for recovery of the mortgage debt, that the receipt did not require to be registered and that the words " no money remains due " did not purport to extinguish the mortgage PIARI LAL *v.* MAKHAN **I. L. R. 34 All. 528**

——— s. 17 (*b*)—

See REGISTRATION **I. L. R. 39 Calc. 284**

——— s. 23—

See MORTGAGE . **16 C. W. N. 585**

——— ss. 36, 73, 77—

——— Registration—Refusal of Sub-Registrar to register—Appeal to Registrar—Refusal to register based on inability to procure attendance of executants—Suit to compel registration. A sale-deed was presented for registration but the executants did not appear before the Sub-Registrar, who, after four months from the date of execution, reported the fact to the Registrar and was directed by the latter not to register it. Registration was accordingly refused. An appeal against that order to the Registrar was dismissed. It appeared that the summonses by the Sub-Registrar to the executants had been returned unserved. The vendees brought a suit for registration of the document. *Held*, that the suit was maintainable, the refusal by the Sub-Registrar to register not being based upon denial of execution. *Luckhi Narain Khettry* v. *Sat Cowrie Pyne I. L R 16 Calc 189*, distinguished. KHADIM HUSAIN *v* BHARAT SINGH (1912) **I. L. R. 34 All 315**

——— ss. 73, 74, 77—

——— Registration—Refusal to register—Inquiry ordered, but application dismissed on account of parties failing to attend—Suit to compel Registration. A Sub-Registrar refused to register a document presented to him, and on the application of one of the parties, the Registrar directed an inquiry under s. 74 of the Indian Registration Act, 1908. On the date fixed for the inquiry, however, the parties failed to appear, and the Registrar accordingly dismissed the application. *Held*, that this amounted to a refusal to register within the meaning of s. 77 of the Act and a suit to compel registration would lie. *Sajib-*

REGISTRATION ACT (XVI OF 1908)—*concld.*

——— **s. 73, 74, 77**—*concld.*

ullah Sirkar v. *Haji Khosh Mohamed Sirkar, I. L. R. 13 Calc. 264,* followed *Udit Upadhia* v. *Imam Bandi Bibi, I. L. R. 24 All 402,* distinguished. ABDUL HAKIM KHAN *v.* CHANDAN (1911) **I. L. R. 34 All. 165**

REGULATION (VIII OF 1800).

——— *Regulation, VIII of 1800.* Mulki papers or returns filed by *elakadars* under the provisions of Regulation VIII of 1800, para. 3, although not of the same evidentiary value as the Registers themselves, inasmuch as they require proof of origin and authentication, are nevertheless good evidence of title, if they contain statements made at a time when there was no dispute and against the proprietary interest of the maker. KALI SANKAR SAHAI *v.* MAHARAJA PRATAP UDAI NATH SAHI DEO (1911) . **16 C. W. N. 683**

REGULATION (VI OF 1831).

See SERVICE INAM **I. L. R. 35 Mad. 705**

RELEASE.

See MORTGAGE . **I. L. R. 34 All. 606**

RELIGIOUS CEREMONY.

——— *Right to perform religious ceremonies, if may be enforced—Agreement to share profits of religious services, suit if lies to enforce* Parties who require religious ceremonies to be performed for their benefit are at liberty to choose the priest by whom they shall be performed and no declaration can be given that any person is exclusively entitled to officiate at ceremonies at a particular place Where the plaintiffs claimed under an agreement executed by the ancestors of the plaintiffs and defendants that whoever amongst them might perform ceremonies on a particular occasion on the banks of the river Punpun at Gaya he should bring whatever he might earn thereby into a common fund to be enjoyed by all the members of the family: *Held,* that such agreement cannot be obligatory on the successors of the parties for all time in spite of the wishes of the members who might desire to terminate it, and a suit does not lie to enforce the claim. *Dino Nath* v. *Protap Chandra, I. L. R. 27 Calc. 30: 4 C. W. N. 79,* and *Bheema* v. *Kotha Kota, 17 Mad L. J. 493,* distinguished. DWARKA MISSRA *v.* RAMPRATAP MISSRA (1911) **16 C. W. N. 347**

RELIGIOUS ENDOWMENT.

See RELIGIOUS ENDOWMENTS ACT

——— *Religious Endowments Act (XX of 1863), ss 7, 8, and 10—Suit brought by surviving member of a Committee, whether maintainable.* A suit brought by a surviving member or members of a Committee appointed under s. 7 of the Religious Endowments Act (XX of 1863), is maintainable. *Santhalva* v. *Manjanna Shetty, I. L. R. 34 Mad. 1,* dissented from. RAGHUNANDAN RAMANUJA DAS *v.* BIBHUTI BHUSHAN MUKERJEE (1911) . . . . **I. L. R. 39 Calc. 304**

RELIGIOUS ENDOWMENTS ACT (XX OF 1863).

——— **ss. 7, 8, 10.**

See RELIGIOUS ENDOWMENT. **I. L. R. 39 Calc 304**

RELIGICUS FOUNDATION.

——— *Endowed Property—Limitation Act XV of 1877, s. 28, Sch. II, Arts. 124, 144—Temple trusteeship and properties, bar of suit for former involves bar of suits for latter.* The dismissal of a suit to recover the office of trustee for a temple whereby the right to the trusteeship is lost, involves the loss of the right to recover a portion of the endowment. GOVINDASAMI PILLAI *v.* DAKSHINAMURTI POOSARI (1910) **I. L. R. 35 Mad. 92**

RELIGIOUS INSTITUTION.

See MAHOMEDAN LAW—ENDOWMENT. **I. L. R. 36 Bom. 308**

RELIGIOUS POEM.

See OBSCENE PUBLICATION **I. L. R. 39 Calc. 377**

REMAND.

See CIVIL PROCEDURE CODE, 1908, O. XXI, R 23 . **I. L. R. 34 All. 612**

RENT.

——— **arrears of—**

See MORTGAGE . **I. L. R 39 Calc. 810**

——— **liability of tenant for.**

See LANDLORD AND TENANT **I. L R. 34 All. 604**

RENT SUIT.

See LIMITATION ACT (XV OF 1877), SCH. II, ARTS. 110, 116. **I. L. R. 34 All. 464**

RENT-FREE GRANT.

See ESTOPPEL . **I. L. R. 38 Calc 439**

RENT-FREE TANK.

See ESTOPPEL . **I. L. R. 39 Calc. 439**

See LIMITATION **I. L. R. 39 Calc. 453**

REPUTE.

See BURMESE LAW—MARRIAGE. **I. L. R. 39 Calc. 492**

RE-SALE.

See CONTRACT . **I. L. R. 39 Calc. 568**

RES JUDICATA.

See CIVIL PROCEDURE CODE, 1882, ss. 13, 462 . . I. L. R. 36 Bom. 53

See CIVIL PROCEDURE CODE, 1882, s. 43 . . I. L. R. 34 All. 172

See CIVIL PROCEDURE CODE, 1908, s. 11. I. L. R. 34 All. 599
I. L. R. 36 Bom. 548

See MORTGAGE. I. L. R. 39 Calc. 527, 925

See SHEBAIT . I. L. R. 39 Calc. 887

See TRANSFER OF PROPERTY ACT (IV OF 1882), s. 59 . I. L. R. 36 Bom. 617

1. ——— **Execution proceedings**—*Decision in such proceeding not appealed against—Finality of such decision—Erroneous decision on a question of law, whether res judicata.* A decision in a previous execution proceeding which merely lays down what the law is, and is found to be erroneous, cannot have the force of *res judicata* in a subsequent proceeding for a different relief. BAIJ NATH GOENKA *v.* PADMANAND SINGH (1912) I. L. R. 39 Calc. 848

2. ——— **Partition suit**—*Suit by a widow to recover possession of her husband's share in divided family lands after partition by metes and bounds—Alleged partition of a house—Dismissal of suit, family lands being found not divided—Subsequent suit by a reversioner to recover possession of the house, no res judicata.* There were two brothers, Kishorbhai and Desaibhai. Kishorbhai died leaving him surviving his widow Bai Kanku, a daughter Bai Divali, and brother Desaibhai. Subsequently Desaibhai died leaving behind him his daughter's son Muljibhai. In 1884 Bai Kanku brought a suit against Muljibhai to recover possession of her husband's share in divided family-lands after partition by metes and bounds. She alleged that the house in which she lived had fallen to her husband's share at partition. It was found that the family-lands were not divided and the suit was dismissed. Bai Kanku died in 1907. In the year 1908 the plaintiff, who was the nearest heir of Kishorbhai, brought the present suit against Muljibhai to recover possession of the house. A question having arisen as to whether the finding in the suit of 1884 with respect to family lands operated as *res judicata* with respect to the house : *Held*, that the decision in the suit of 1884 did not bar the present suit. MULJIBHAI NARBHERAM *v.* PATEL LAKHMIDAS (1911) I. L. R. 36 Bom. 127

3. ——— **Suit against pledgor**—*Ornaments—Unauthorized Pledge—Subsequent pledge—Recovery of Judgment against pledgor—Non-satisfaction—Suit against pledgee for detention after demand—Tort-feasors—Judgment not res judicata—Omission to raise an issue suggested by defendant—Defendant not claiming under a person against whom the issue was decided after defendant's transaction—Moveable property—Doctrine of lis pendens not applicable—Party and privy.* Plaintiff brought a suit No. 159 of 1897, against *M* to obtain a declaration that *M* was not adopted by plaintiff's

RES JUDICATA—*contd.*

step-mother and that she (the plaintiff) was the owner of the property in suit as the heir of her father and to obtain possession. The cause of action was laid in March 1897. The property in suit included ornaments of considerable value which *M* had pledged with his creditor. After the filing of the suit *M* redeemed the ornaments and again pledged them with *G* with the exception of two which had already been pledged with *G*. The plaintiff recovered judgment against *M* but it was not satisfied. The plaintiff then brought the present suit, No. 56 of 1908, against *G* as pledgee of the ornaments from an unauthorized pledgor for detention of the ornaments after demand on or about the 11th August 1907. The defendant *G* answered that the judgment in the suit of 1897 was a bar to the present suit on the ground that the pledgor and the pledgee were joint tort-feasors and the matter had passed into *res judicata*. At the hearing of the suit, the defendant wanted the Court to raise an issue as to whether *M* was not the validly adopted son, but the Court refused to frame the issue and admitted the judgment in the suit of 1897 (which had decided the issue in the negative) in evidence on the ground, *inter alia*, that the defendant, who was *M's* pleader in that suit, was a privy to it. The Court overruled the defendant's plea of *res judicata* and allowed the plaintiff's claim for the recovery of the ornaments or their value. *Held*, on appeal by the defendant, that the defendant's plea of *res judicata* could not stand. The cause of action in the second suit must be precisely the same as the cause of action in the first suit in order to make the judgment in the first suit a bar to proceedings in the second suit. *Held*, further, that it was an error not to raise an issue as to whether *M* was not the validly adopted son and to admit the judgment in the former suit in evidence on the ground that the defendant was a privy to it. The judgment in the former suit was subsequent to the pledge and the defendant did not claim under a person against whom the issue of adoption had been at the time of the pledge finally heard and determined. The fact that the former suit was pending at the time of the pledge of the ornaments could not prejudice the defendant on the issue of *res judicata*, for the doctrine of *lis pendens* did not apply to moveable property. The defendant was, therefore, not a privy of *M* and was not bound by that judgment. *Held*, also, that the judgment in the previous case was irrelevant to prove that *M* had got possession of the ornaments by means of fraud. GOVIND BABA GURJAR *v.* JIJIBAI SAHEB (1911) I. L. R. 36 Bom. 189

4. ——— **Co-plaintiffs**—*Civil Procedure Code (Act V of 1908), s 11—Civil Procedure Code (Act XIV of 1882), s. 26—Joinder of parties.* The plaintiff *D* and his step-mother *R* (defendant) brought a suit against *C* to recover possession of certain ornaments which formed part of the estate of *M*, the father of *D* and husband of *R*. It was held by the Court of first instance that *R* was entitled to the ornaments, because

RES JUDICATA—*contd.*

they were her *stridhan ;* but the appellate Court held that she was entitled to them not because they were her *stridhan,* but because she was the absolute owner of the property. *D* then sued *R* for a declaration that he, as son and heir to *M,* was entitled to hold the decree. The defendant in reply contended, *inter alia,* that the suit was barred by *res judicata. Held,* that the bar of *res judicata* did not apply, inasmuch as there was no final adjudication as between *R* and *D,* and in the first suit it was a matter of no consequence to the defendant therein for the purposes of the relief to be given against him whether *R* succeeded or whether *D* succeeded. A finding to become *res judicata* as between co-plaintiffs must have been essential for the purpose of giving relief against the defendants. *Ramchandra Narayan* v. *Narayan Mahadev, I. L. R. 11 Bom. 216,* followed. The Court ought not to hold a point to be *res judicata* unless it is clear from the pleadings and the findings in the previous suit. No Court ought to infer *res judicata* by mere arguments from a judgment in a previous suit. *Attorney General for Trinidad and Tobago* v. *Eriche, [1893] A. C 518,* followed. RUKHMINI *v.* DHONDO MAHADU (1911) . . **I. L. R. 36 Bom. 207**

5. ——— **Settlement**—*Suit by after-born son to set aside settlement—Difference between estoppel and res judicata.* Estoppel and *res judicata* are entirely different. *Res judicata* precludes a man averring the same thing twice over in successive litigations, while estoppel prevents him saying one thing at one time and the opposite at another. CASSAMALLY JAIRAJBHAI *v.* SIR CURRIMBHOY EBRAHIM (1911)
I. L. R. 36 Bom 214

6. ——— **Consent decree**—*Civil Procedure Code (Act V of 1908), s. 11—Consent decree between predecessors-in-title of parties in suit—Injunction granted in former suit—Res judicata and estoppel distinguished* A consent decree has to all intents and purposes the same effect as *res judicata* as a decree passed *per invitum* and this notwithstanding the words in s 11 of the Civil Procedure Code "has been heard and finally decided." *In re South American and Mexican Company, [1895] 1 Ch. 37,* followed A consent decree come to between the predecessors-in-interest of the present parties touching matters now substantially and directly in issue between them is *res judicata. Res judicata* ousts the jurisdiction of the Court while estoppel does no more than shut the mouth of a party. Estoppel never means anything more than that a person shall not be allowed to say one thing at one time and the opposite of it at another time ; while *res judicata* means nothing more than that a person shall not be heard to say the same thing twice over. BHAISHANKER NANABHAI *v.* MORARJI KESHAVJI & Co. (1911) . . . **I. L. R. 36 Bom. 283**

7. ——— **Compromise decree, recision of**—*Civil Procedure Code, s. 257 A—Agreement contravening, rule in—Not opposed to public policy—Judgment-debtor may waive rule.* The test for

RES JUDICATA—*contd.*

determining whether there is an estoppel in any particular case in consequence of a decree passed on a compromise is whether the parties decided for themselves the particular matter in dispute by the compromise and the matter was expressly embodied in the decree of the Court passed on the compromise or was it necessarily involved in, or was it the basis of, what was embodied in the decree. The basis of a compromise decree is a contract between the parties to the litigation and the principles applicable to contracts would often have to be considered in determining the rules of estoppel applicable to such decrees ; at the same time such a decree cannot be regarded as a mere contract, and has got a sanction for higher than an agreement between parties. The parties to the decree cannot therefore put an end to it at their pleasure in the manner that they could rescind a mere contract. Nor can it be impeached on some grounds on which a mere contract could be impeached such as absence of consideration or mistake. *Jenkins* v. *Robertson, 1 H. L. Sc.* and *Div. 117,* distinguished. The reason is that the Court having bound to adopt the agreement between the parties as its own adjudication, the interpretation to be placed upon such adjudication, ought to be the same as that to be placed on the agreement itself. A compromise decree may in some respects have a greater validity than one passed after contest between the parties as such a decree has all the force of a compromise or a species of contract which is highly favoured by the Courts. Judgments passed on mutual agreements of parties are distinguishable from judgments by default and decrees passed upon a confession of judgment or an admission by the defendant that the plaintiff is entitled to a particular relief. An agreement in contravention of s. 257-A of the Civil Procedure Code is not opposed to public policy. The prohibition in section is not based on any rule of public policy rendering such agreement illegal. It is merely unenforceable in execution proceedings or by a fresh suit as the case may be. A judgment-debtor is entitled to waive the benefit of the rule. VENKATA PERUMAL RAJA BAHADUR *v.* THATA RAMASAMY CHETTY (1911)
I. L. R. 35 Mad. 75

8. ——— **Rent decree**—*How far decree for rent in previous suit res judicata on the question of title in subsequent suit. A,* a landlord tendered patta to *B,* his tenant, who objected to the patta on the ground that the extent of his holding was overstated, some of the lands included in the patta not belonging to *A,* but to *B* himself. The issue was raised whether the patta tendered was proper ; the Court found that it did not contain any objectionable matter and was therefore a proper patta. Decree was accordingly given for rent in favour of *A. A* tendered a similar patta to *B* for a subsequent year and *B* again raised a similar objection to the extent of the holding. In a suit brought by *A* for the rent, *B* objected to the extent of the holding and it was contended first that the matter was *res judicata* by reason of the decision in the

RES JUDICATA—*concld.*

previous suit :—*Per* MUNRO, *J.*—The finding in the previous suit that the patta was proper, was a finding that the relationship of landlord and tenant subsisted between the plaintiff and the defendants in respect of the land entered in the patta and the defendants cannot be allowed to plaintiff again to proof of his title. *Per* SANKARAN-NAIR, *J.*—A decree for rent does not necessarily require a decision as to the terms of the patta or the extent of the land for which rent has to be paid. There being no express finding in the previous suit on the question of the ownership of the land, it cannot be implied from the mere passing of the decree for rent that the question was decided for the purpose of the subsequent suit. Where a question need not be deemed to have been decided on the ground that the decree in the previous suit requires such assumption to make it a decree rightly passed, a party is not, in the absence of a clear and express finding, precluded from raising the question in a subsequent suit The question whether *A* or *B* was owner of the land included in the patta was not *res judicata* by reason of the previous decision BAMMIDI BAYYA NAIDU *v.* BAMMIDI PARADESI NAIDU (1911) . **I. L. R. 35 Mad. 216**

RESTITUTION OF CONJUGAL RIGHTS.

See LIMITATION ACT (IX OF 1908), S. 29. **I. L. R. 34 All. 412**

RESTORATION OF SUIT.

See CIVIL PROCEDURE CODE, 1908, O. IX, RR. 8 AND 9, S. 151. **I. L. R. 34 All. 426**

RESUMPTION.

See CANTONMENT TENURE. **I. L. R. 36 Bom. 1**

See FORFEITURE **I. L. R. 36 Bom 539**

See GRANT . **I. L. R. 36 Bom. 438**

See JAGIRS . . **I. L. R. 39 Calc. 1**

See REGISTRATON ACT (III OF 1877), SS. 32, 33 . . **I. L. R. 34 All. 331**

RETRIAL.

See JURY, TRIAL BY. **16 C. W. N 909**

REVENUE SALE LAW (ACT XI OF 1859).

——— **ss. 2, 3—**

——— *Beng. Act VII of 1868, s. 30—Panchannagram, tenure in, if may be sold for arrears of revenue—"Default," date of, fixed by statute or notification thereunder, if may be varied by administrative Rules—Rent when becomes "arrears" and when "default" in payment takes place.* Tenures held under Government in Dihi Panchannagram in the District of 24-Pargunnahs are saleable under Act XI of 1859 by virtue of the provisions of Beng. Act VII of 1868. No distinction can be drawn between the provisions of Act XI of 1859 and those of Beng Act VII of 1868 with reference to the procedure for sale and with reference to what constitutes arrears. Where the *kabuliyat* executed by the original holder of the tenure provided that the *jama*, an annual one, would be paid in the Collectorate within the 28th June of every year, the rent payable under the terms of the *kabuliyat* on the 28th June 1902 was not in arrear according to the provisions of s. 2 of Act XI of 1859 till the 1st of July 1902. Where further a Notification issued by the Board of Revenue under s 3 of Act XI of 1859 "determined and fixed the 28th June of each respective year as the latest day of the payment of rents of all descriptions of tenures in Khas Mehal Panchannagram in default of which payment on or previous to that date tenures in arrears in that mehal will be sold at public auction to the highest bidder :" *Held*, that the 28th June 1903 was the first date under the notification and the Statute when the default, such as would enable the "tenure in arrears" to be sold, arose in respect of the amount payable under the *kabuliyat* on the 28th June 1902. The sale in this case which took place in March 1903 was therefore illegal and liable to be set aside. General considerations or administrative rules not having the sanction of the Statute, such as Rule 7 of Part III, c. 16, of the Survey and Settlement Manual, could not operate to vary the contract of the parties and the statutory provisions applicable thereto *Durlabh Chandra Kar* v. *Hajee Box Ellahi*, *13 C. W. N 633*, reversed. HAJI BUKSH ELAHI *v.* DURLAV CHANDRA KAR (1912) . . . . **16 C. W. N. 842**

REVENUE SALE LAW (ACT XI OF 1859)—*contd.*

——— **s. 2—*concld.***

——— **ss. 10, 11—**

——— *Separate account opened in favour of shareholder owning shares in specific portion of estate—Such shareholder if purchases a revenue sale free from incumbrance—Land Registration Act (Beng. VII of 1876), s 70* MOOKERJEE AND VINCENT, *JJ* (BRETT, *J.*, *contra*)—Person in whose favour the Collector has opened a separate account, though they are neither sharers in the whole estate nor proprietors of specific lands comprised therein but are shareholders in some only of the many villages comprised in the entire estate, do not by purchase of the estate at a sale for arrears of revenue, acquire it free from incumbrances. The privilege given by s. 53 of Act XI of 1859 to shareholders with whom separate accounts have been validly opened under s. 10 or s. 11 of the Act, has not been extended to shareholders in whose favour accounts have been opened under s. 70 of the Land Registration Act, nor can such privilege be claimed by shareholders with whom separate accounts had been opened by the Collector before the passing of the Land Registration Act in contravention of ss. 10 and 11 of Act XI of 1859 *Nanhu Shahu* v. *Ram Prosad, 21 W. R. 38*, approved. MAHAMAD MEHDI HUSAIN KHAN *v.* SHEO SHANKAR PERSAD SINGH (1911) . . . . **16 C. W. N. 817**

REVENUE SALE LAW (ACT XI OF 1859)—*concld.*

——— ss. 10, 11, 53—

See SALE FOR ARREARS OF REVENUE.
I. L. R. 39 Calc. 353

——— s. 37—

1. ——— *Onus of proof—Lakhiraj or mal lands.* In a suit for *khas* possession free of incumbrance of lands on the ground that they were included within a taluk purchased by the plaintiff at a revenue sale it was found that the defendants held certain rent-free tenures within the estate and that these tenures existed from before the Permanent Settlement. *Held*, that the onus was on the plaintiff to prove that the lands in suit were included within the *mal* lands of the estate. HALODHAR CHATTOPADHYA *v.* RAMENDRA NARAIN RAY CHOUDHRY (1912)
16 C. W. N. 980

2. ——— *Purchaser's suit for recovery of possession—Defendant's plea that land included in howla which is protected—Onus* Where a suit for recovery of possession of land by a purchaser of an undivided share in an estate at a revenue sale was resisted by the defendants on the plea that the land in suit was included within their *howla* which was a protected interest. *Held*, that the onus lay on the defendants to prove their allegation. *Rhidoy Krista* v *Nobin Chunder, 12 C. L. R. 457, Rajendro Kumar* v *Mohim Chunder, 3 C W. N 763*, explained *Sheodeni Roy* v. *Chatoorbhuj Roy. 12 C L J. 376*, approved. RUTNESSUR SEN *v* KALI KUMAR BIDYABHUSAN (1912) . . . . 16 C W. N. 693

REVERSAL OF SALE.

See PARTIES . I. L. R. 39 Calc. 881

REVERSIONER

See FRAUD . I. L. R. 36 Bom. 185

See HINDU LAW—WIDOW.
16 C. W. N. 106
I. L. R. 34 All. 207

REVIEW.

1 ——— **Application for leave to appeal to Privy Council**—*Order rejecting such application, if subject of review—Interest subsequent to decree, how far can be allowed by the High Court to be calculated—Order rejecting application for review by a Court other than High Court, if appealable—Civil Procedure Code (Act V of 1908), s 114. OO. XLVII and XLIII, r 1(v).* An order rejecting an application for leave to appeal to His Majesty in Council comes within the description of orders contemplated in s. 114 of the Code of Civil Procedure, 1908, and is subject to review. *Lutf Ali Khan* v. *Asgur Reza, I. L R. 17 Calc. 455*, distinguished. The High Court should not grant leave to appeal to His Majesty in Council in cases in which the specified amount of R10,000 can only be reached by the addition of interest subsequent to the decree. *Gooroopersad Khoond* v. *Juggutchunder, 8 Moo. I. A. 166*, followed. NAND-KISHORE SINGH *v.* RAM GULAM SAHU (1912)
I L. R. 39 Calc. 1037

2. ——— **Appeal from original decree**—*Review of judgment—Effect of order on review*—The effect of the granting of an application for review is to supersede the decree which is the subject of such application No appeal can, therefore, be maintained against the decree anterior to the review, but only against the subsequent decree *Kuar Sen* v. *Ganga Ram, All. Weekly Notes* (1890) 144, and *Kanhaiya Lal* v. *Baldeo Prasad, I. L. R 28 All 240.* followed *Uma Kunwari* v. *Jarbandhan, I. L. R. 30 All 479*, distinguished BRIJBASI LAL *v* SALIG RAM (1912)
I. L. R. 34 All. 282

REVISION.

See ADMINISTRATION BOND
I. L. R. 39 Calc. 563

See CIVIL PROCEDURE CODE, 1908., S 115 . . I. L. R. 34 All. 592

See CRIMINAL PROCEDURE CODE, S 476
I. L. R. 34 All 267, 394

See JURISDICTION . I. L. R. 34 All. 118

See PROVINCIAL INSOLVENCY ACT (III OF 1907), SS 24, 26 I. L. R. 34 All. 442

See PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887), S 25
I. L. R. 34 All. 348

REVISIONAL JURISDICTION.

See HIGH COURT, JURISDICTION OF.
I. L. R. 39 Calc. 473

See CIVIL PROCEDURE CODE, 1908, S. 115.
I. L. R. 36 Bom. 105

REVOCATION.

——— power of

See GIFT . . I. L. R. 39 Calc. 933

REVOCATION OF GIFT.

See CONTRACT ACT, S 19.
I. L. R. 36 Bom. 37

RIGHT OF PRIVATE DEFENCE.

See RIOTING . I. L. R. 39 Calc. 896

RIGHT OF WAY

See HINDU LAW—PARTITION.
I. L. R. 36 Bom. 379

RIGHT TO WORSHIP.

See USUFRUCTUARY MORTGAGE.
I L R. 39 Calc 227

RIOTING.

1. ——— **Pardanashin lady**—*Test of liability of owner, or person having or claiming an interest in land, for the acts and omissions of an agent or manager—Appointment of latter by the mother, and not by the adopted son—Legality of the conviction of the son—Penal Code (Act XLV of 1860), s. 154.*

RIOTING—*contd.*

The criminal liability of a person specified in s 154 of the Penal Code for the acts or omissions of an agent or manager depends upon the question by whom the latter was appointed. Where, therefore, it was shown that three Hindu *pardanashin* ladies had the management of the estate and were responsible for the appointment of the *naib* who had fomented the riot, and that their adopted sons had nothing to do with such appointment, though they took some share in the active management of the estate. *Held,* that the ladies were alone liable under s. 154. It is impossible to punish in every case every person who has any interest in the land The responsibility depends ont he fact of the person who caused the riot being himself the person who has an interest in the land, or an agent or a manager of such person, and one of the facts to be proved is, whose agent or manager the person fomenting the riot is SIVA SUNDARI CHOWDHRANI *v.* EMPEROR (1912) . . **I. L. R. 39 Calc. 834**

2. ——— **Common object**—*Charge—Offence—Common object—Necessity of stating the common object in the charge under ss. 143, 147 and 149 of the Penal Code—Effect of omission to state the common object—"Succeeded by another Magistrate," meaning of—Criminal Procedure Code (Act V of 1898) ss. 221, 223, 350.* An offence can be legally described by its specific name in the charge and the question whether any further particulars are necessary under s. 223 of the Criminal Procedure Code is a question of discretion according to the circumstances of each case. In cases of rioting the common object should be stated in the charge, but omission to state it, under ss. 143 and 147 of the Indian Penal Code, does not vitiate a conviction if there is evidence on the record to show it. It is otherwise with a charge under s. 149, Indian Penal Code, for, then, there is no specific name for the offence, and the fact that any offence is committed in prosecution of the common object is of the essence of the case, and there could be no conviction for any offence committed with a different object. It is obligatory to set out the common object in a charge under s. 149 unless it has already been specified in the main charge under s 147 *Basiruddi* v *Queen-Empress, I L. R. 21 Calc. 827,* referred to. The words "succeeded by another Magistrate" in s 350 of the Criminal Procedure Code should not be construed in a narrow sense, but should be interpreted to mean—ceases to exercise jurisdiction in the particular inquiry or trial, and not in the particular post. *Thakur Das Manjhi* v. *Namdar Mundul, 24 W. R. Cr. 12, Emperor* v. *Purshottam Kura, I. L. R. 26 Bom 418,* referred to. *Mohesh Chandra Saha* v. *Emperor, 12 C. W. N. 416,* and *Ali Mahomed Khan* v. *Tarak Chandra Banerji, 13 C. W. N. 420,* followed. *Queen-Empress* v. *Radhe, I. L. R. 12 All. 66, Deputy Legal Remembrancer* v. *Upendra Kumar Ghose, 12 C. W. N. 140,* not followed. KUDRUTULLA *v.* EMPEROR (1912)
I. L. R. 39 Calc. 781

3. ——— *Common object not unlawful—Entering upon land held jointly by the judgment-debtors to take symbolical possession thereof—Right of private defence—Liability of a person for individual acts done in excess of such right—Power of Appellate Court to alter a finding of acquittal under ss. 325/324 of the Penal Code into one of conviction under s. 323—Penal Code (Act XLV of 1860), ss. 99, 147 and 323—Criminal Procedure Code (Act V of 1898), s. 423.* Where a body of about ten men, belonging to the decree-holder's party, went with the Civil Court officers upon a plot of land in the joint possession of the judgment-debtors to take symbolical possession thereof, and the drummer was assaulted by one of the latter, whereupon the appellants and their party replied by an attack on their opponents, during the course of which one of the appellants' party, not before the Court, fractured the skull of the drummer's assailant by an isolated act, but the appellants continued to beat him after he had fallen helpless on the ground: *Held,* that the appellants had a right of private defence under the circumstances, that their common object was, therefore, not unlawful and that the conviction under s. 147 of the Penal Code was bad, but that, having exceeded such right by beating the wounded man after he had fallen, they were guilty under s. 323 When an attack is made on persons acting in the lawful exercise of their right over property, they are entitled to the right of private defence, and the only question that arises thereafter is whether any member of the party individually exceeded the right Persons exercising their lawful rights are not members of an unlawful assembly, nor can the assembly become unlawful by their repelling an attack made on them by persons who had no right to obstruct them, nor by exceeding the lawful use of their right of private defence. In such a case each is liable only for his individual acts done in excess of such right. When an accused charged under ss. 147 and 325/324 of the Penal Code is convicted of the former and acquitted of the latter offence, the Appellate Court has power to acquit him of rioting, and convict him of hurt under s. 323. KUNJA BHUIYA *v.* EMPEROR (1912)
I. L. R. 39 Calc. 896

RISK NOTE.

See RAILWAY COMPANY
16 C. W. N. 766

See RAILWAYS ACT, s 75
I. L. R. 34 All. 656

ROAD-CESS RETURN

See TEISHKHANA PAPER.
I. L. R. 39 Calc. 995

1. ——— **Evidence**—*Road-cess return filed by a temporary lessee—Bengal Cess Act (IX of 1880), s. 95—Evidence Act (I of 1872), s. 21.* The provisions of s. 95 of the Bengal Cess Act are not exhaustive. They merely limit the application of s. 21 of the Indian Evidence Act, and exclude road-cess returns when they are sought to be admitted in favour of the person by or on

ROAD-CESS RETURN—*concld.*

behalf of whom they have been filed. A road-cess return filed by a person in his capacity as a temporary lessee of a certain property is admissible in evidence in favour of the superior landlord, inasmuch as he could not be regarded as a person by or on behalf of whom the return was filed. SEWDEO NARAIN SINGH *v.* AJODHYA PROSAD SINGH (1912) . . . **I. L. R. 39 Calc. 1005**

2. ——— Statements made in road-cess returns by *khorposhdars* or holders of a maintenance grant as to the character of their tenure are good evidence of title against a defendant claiming under them, if not as admissions, certainly as positive evidence in support of plaintiff's claim. KALI SANKAR SAHAI *v.* MAHARAJA PRATAP UDAI SAHI DEO (1911) **16 C. W. N. 683**

ROYALTIES.

——— arrears of—

See MORTGAGE . **I. L. R. 39 Calc. 810**

S

SALE.

——— by servant or partner—

See ADULTERATION.
I. L. R. 39 Calc. 682

——— confirmation of—

See SECOND APPEAL.
I. L. R. 39 Calc. 687

——— setting aside—

See SALE IN EXECUTION OF DECREE.
I. L. R. 39 Calc. 26

——— Sale by Receiver—*Sale by the Court and sale by Receiver under direction of Court, distinction between—Sale by Receiver, if requires confirmation of sale certificate by Court—Civil Procedure Code (Act V of* 1908), *O. XXI, rr. 92 and 94.* A sale by a Receiver under direction of Court is not a sale by Court and in such a sale the Court does not grant a sale certificate nor does it confirm the sale. *Minatoonnissa Bibee* v. *Khatoonissa Bibee, I L R 21 Calc. 479,* explained. GOLAM HUSSAIN CASSIM ARIFF *v.* FATIMA BEGUM (1910) **16 C. W. N. 394**

SALE-DEED.

See AGREEMENT TO SELL.
I. L. R. 36 Bom. 446

SALE FOR ARREARS OF REVENUE.

——— when no arrears due—

See SALE FOR ARREARS OF REVENUE.
I. L. R. 39 Calc. 981

1. ——— *Act XI of 1859, s. 54—Incumbrance extinguished by sale under mortgage-decree, at the date of sale, not of confirmation—Liability of mortgagee-purchaser for revenue* The appellant as a purchaser at a revenue sale

SALE FOR ARREARS OF REVENUE—*contd.*

of the property in suit sued to eject the respondent who claimed title under a certificate dated April 23, 1900, confirming his purchase thereof on March 19, 1900, under a decree for sale obtained by himself as mortgagee. The revenue became in arrear on March 29, 1900. *Held,* that the respondent's proprietary title was complete on March 19, and that it passed to the appellant by the revenue sale. His mortgagee title could not be kept alive so as to operate on March 29, 1900, as an incumbrance within the meaning of s. 54 of Act XI of 1859. BHAWANI KUWAR *v.* MATHURA PRASAD SINGH (1912) . . . **L. R. 39 I. A. 228**

2. ——— *Revenue Sale Law (Act XI of 1859), ss. 10, 11 and 53—Estate held in common tenancy, meaning of—Purchase at a revenue sale of an undivided interest of specific mouzas in an estate in respect of which separate accounts were opened, effect of—Reference to a third Judge—Civil Procedure Code (Act XIV of 1882, s. 575—Act V of 1890, s. 98* (2). *Per* MOOKERJEE and VINCENT, *JJ*, (BRETT, *J.* dissenting), that a proprietor, who is not a recorded sharer of a joint estate held in joint tenancy, within the meaning of s. 10 of the Revenue Sale Law, nor a recorded sharer whose share consists of a specific portion of the lands of the estate within the meaning of s. 11, but is recorded as proprietor of an undivided interest held in common tenancy of a specific portion of the lands of the estate, but not extending over the whole estate within the meaning of s. 70 of the Land Registration Act, is not entitled to acquire the estate purchased by him at a sale held for arrears of revenue, free of encumbrances. The expression "estate held in common-tenancy" in s. 10 of the Revenue Sale Law means an estate where all the sharers have a common right and interest in the whole of the estate Where, therefore, various co-sharers have certain interest, not in the whole estate, but only in particular villages of that estate, it cannot be said that the estate is held in common-tenancy. *Nunhoo Shahe* v. *Ram Pershad Narain Singh, 21 W. R., 38,* followed. MAHAMMAD MEHDI HASSAN KHAN *v.* SHEOSNANKAR PERSHAD SINGH (1911) **I. L. R. 39 Calc. 353**

3. ——— *Act XI of 1859, ss. 2 and 3—Bengal Act VII of 1868—Government tenures in mahal Panchannagram in the 24-Pergunnahs—Kabuliat fixing date for payment of revenue in every year—Sale for arrears when no arrears were due—Variation of contract of parties by general considerations or administrative rules not permissible.* S. 2 of Act XI of 1859 enacts that "if the whole or a portion of a *kist* or instalment of any month of the era according to which the settlement and *kistbandi* of any mahal have been regulated be unpaid on the 1st of the following month of such era, the sum so remaining unpaid shall be considered as an arrear of revenue." S. 3 provides that the "Board of Revenue at Calcutta shall determine upon what dates all arrears of revenue shall be paid up in each district under their jurisdiction, in

SALE FOR ARREARS OF REVENUE— *contd.*

default of which payment estates in arrear shall be sold;" and a notification duly published in compliance with that section on 6th October 1871 "fixed the 28th June of each respective year as the latest date of payment of the rents of all descriptions of tenures in Khas Mahal Panchannagram, in default of which payment on or previous to that date tenures in arrears in that Mahal will be sold." The appellant was the holder of a Government tenure in Dihi Panchannagram, to which, by virtue of Bengal Act VII of 1868, Act XI of 1859 was applicable; and the *kabuliyat* under which he held stipulated for "payment of the whole *jumma* in the Collectorate within 28th June every year" The revenue remaining unpaid on 28th June 1902, the tenure was, after the preliminary procedure prescribed by the Acts, sold for arrears of revenue on 16th March 1903, and purchased by the respondent *Held* (reversing the decision of the High Court), that, on the construction of the Acts and the above notification, the revenue was not in arrear until 1st July 1902, and the date fixed as that on which the tenure could be sold in default of payment of the arrears was 28th June 1903 There were, therefore, at the date of the sale no arrears of revenue, and in accordance with the decision in *Balkishen Das v. Simpson, I L R. 25 Calc 833; L. R. 25 I. A. 151,* the sale was consequently invalid. No variation of the contract of parties and the statutory provisions applicable thereto is possible by reason of general considerations of administrative rules which have not the sanction of Indian statue HAJI BUKSH ELAHI *v.* DURLAV CHANDRA KAR (1912) . . . . **I L. R. 39 Calc. 981**

4. ——— *Revenue Sale Law (Act XI of 1859), ss. 6, 33—Sale within 30 days of service of sale proclamation, if nullity or only irregular—Question if one of due service—Beng Act VII, of 1868, s 8—Second appeal—Finding of irregularity and inadequacy of price—Sale if must be held bad as matter of law.* The fact that the proclamation of sale was affixed in the Collectorate less than 30 days before the date of sale, in contravention of the provisions of s. 6 of Act XI of 1859, does not make the sale a nullity. The sale in such a case is a sale under the provisions of the Act and the restrictions imposed by it on the right of the defaulter to have the sale set aside apply. *Lala Mobarak Lal* v. *The Secretary of State, I. L. R 11 Calc. 200, held* not binding by reason of the decision in *Tasadduk Rasul* v. *Ahmad Hussain, I. L R. 21 Calc. 66,* and *Gobind Lal* v *Ramjanam, I. L. R. 21 Calc. 70.* Where the Court of Appeal below found (i) that the sale proclamation was affixed in the Collectorate within less than 30 days of the sale; (ii) and that the price realised at the sale was inadequate; (iii) but that there was no evidence to connect the inadequacy of the price with the irregularity and dismissed the suit to set aside the sale. *Held,* that it was not open to the High Court in second appeal to hold as a matter of law that the inadequacy of the price was the consequence of the irregularity, and the appeal was concluded by the findings of fact of the lower Appellate Court. *Semble: Per* COXE, *J.*—The question whether notice of the proclamation was served in time is part of the larger question whether it has been duly served within the meaning of s. 8 of Beng. Act VII of 1868 *Janhavi* v. *Secretary of State, 7 C. W. N. 377; Sheikh Mohamed Aga* v. *Jadunandan, 10 C. W. N 137, Sheo Ratan* v. *Net Lal, I L R 30 Calc 1, 6 C W. N. 688,* doubted. GANGADHAR DASS v. BHIKARI CHARAN DAS (1911) . . . . **16 C. W. N. 227**

SALE FOR ARREARS OF REVENUE— *concld.*

5. ——— *Revenue Sale Law (Act XI of 1859), s. 54—Purchaser of share of revenue paying estate—Suit to recover from person in wrongful possession from before sale—Limitation.* A purchaser at a revenue sale of a share in a revenue-paying estate is not a person claiming from or through the defaulter but rather adversely to him and under a paramount title A person who has not acquired title as against the defaulter by adverse possession for the full statutory period, cannot resist the purchaser's suit for recovery unless his possession has been adverse to the purchasers for the statutory period. *Kalanand Singh* v. *Sarafat Hosein, 12 C W N 528,* not followed. BILAS CHANDRA MUKHERJEE *v.* AKSHOY KUMAR DAS (1912) . . . . **16 C. W N 587**

SALE IN EXECUTION OF DECREE.

See PARTIES . **I. L. R. 39 Calc. 881**

1. ——— **Execution sale**—*Application to set aside—Limitation Act IX of 1908, s. 18, Sch. I, Art 166—Fraud employed to bring about sale, if may save bar of limitation—Fraudulent concealment, what amounts to—Fraud, plea of—Proof.* When an application to set aside an execution sale was made more than 30 days after the sale, but it was urged that s. 18 of the Limitation Act applied to the case · *Held,* that the fraud which it is necessary to prove to bring the case within s 18 of the Limitation Act may have occurred prior to the sale—for fraud, at any rate of the nature generally employed in bringing about an illegal sale, is a continuing influence, and until that influence ends, it retains its power of mischief. *Purna Chandra Mandol* v. *Anukul Biswas, I.L.R. 36 Calc. 654,* explained, *Rahimbhoy Habibhoy* v. *Turner, I. L. R. 17 Bom 841,* referred to. Fraud is not to be lightly charged or lightly found specially in cases of applications to set aside and execution sale, where this reserve is too often neglected. Misstatement of value, if it can be described as "fraud," does not constitute fraudulent concealment, and non-publication of sale proclamation in the mofussil even if it exposes the sale to attack at the instance of the judgment-debtor, would not by itself bring the case under s. 18 of the Limitation Act, unless it is shown that the judgment-debtor has, by means of fraud of which the decree-holder was guilty or to which he was accessory,

SALE IN EXECUTION OF DECREE— *contd*

been kept from the knowledge of his right NARAYAN SAHU *v.* MOHANTH DAMODAR DAS (1912) **16 C. W. N. 894**

2. ——— *Execution sale, application to set aside, by deposit—Civil Procedure Code (Act V of 1908), O XXI, r 89—Previous purchaser of property not affected by the sale, if may apply to make deposit—Conditional deposit if valid— Withdrawal of condition, effect of—Deposit not made on the last day owing to absence of Judge —Effect.* Where on the last day allowed by law to make a deposit under r 89 of O. XXI of the Civil Procedure Code for the purpose of setting aside a sale, the petitioner, owing to the presiding officers having left the Court earlier than usual, was unable to make the required deposit. *Held*, that the petition and the deposit were properly received on the next day, as not act of the Court itself ought to be allowed to prejudice the position of the petitioner A conditional deposit is not a good deposit under r 89, O XXI, but where the petitioner withdrew the condition the moment the decree-holder auction-purchaser objected. *Held*, that there were no sufficient grounds under the circumstances to treat the deposit as invalid. R. 89, O. XXI, does not confer a right to make a deposit to a person who had purchased the property sold so far back from the date of the sale and the execution proceedings that his interest was not affected by the sale DULHIN MATHURA DAS KOER *v.* BANSIDHAR SINGH (1911) **16 C. W. N. 904**

3. ——— *Execution sale— Joint decree—Application to set aside sale by some of judgment-debtors, if whole sale can be set aside—Sale proclamation, gross understatement of value by decree-holder, if by itself vitiates sale—Waiver by judgment-debtor of fresh sale proclamation, if amounts to waiver of other irregularities.* Where a decree was obtained jointly against several persons and their respective liabilities were not ascertained therein, and the decree-holder proceeding against jointly had their property sold in execution · *Held*, that upon good cause shown the whole sale should be set aside although only some of the judgment-debtors applied within time to set aside the sale. The application of the other judgment-debtors though made out of time could very well be treated as applications to be added as parties to the previous application of their co-judgment-debtors, having regard to the fact that all the applications were tried together and were thus virtually consolidated. Where on the date fixed for the sale of immoveable property in execution of a decree, the judgment-debtor applied for a postponement and agreed that if the decree was not paid up by the adjourned date the sale might be held without the issue of fresh proclamation, and the decree not having been paid up the sale took place on the adjourned date: *Held*, that in the absence of evidence to show that they were aware of the contents of the sale proclamation it could not be said that the judgment-debtor had waived any irregularities in the sale proclamation which contained a gross

SALE IN EXECUTION OF DECREE— *concld.*

understatement of the value of the attached properties. *Giridhari Singh* v. *Hurdeo Narain, L. R. 3 I. A. 230; 26 W R. 44; Arunachelam*, v. *Arunachelam, L R 15 I A. 171; I. L. R 12 Mad. 19*, distinguished Where with the object of seizing a very valuable property for the smallest possible price, the decree-holder grossly understated its value in the sale proclamation with the consequence that he was able to purchase the property without competition at a fraction of its real price · *Held*, that the deliberate misstatement of value in the sale proclamation was by itself a sufficient ground for vacating the sale. *Sadatmand Khan* v. *Phul Kuar, I. L. R. 20 All. 412; L. R 25 I. A. 146; 2 C. W. N. 550*, followed *Abdul Kashem* v. *Benode Lal, 12 C. W. N. 757*, not followed. KABILANUND THAKUR *v.* PIRTHI CHAND LAL CHOWDHURY (1911) **16 C. W. N. 704**

4. ——— *Setting aside sale —Material irregularity, allegation of—Civil Procedure Code (Act XIV of 1882), ss. 287, 293— Proclamation of sale—Sale fixed to take place "at monthly sales," naming day, place and hour of commencement of such sales—Absence of presiding officer* A sale in execution of a decree was adjourned from 16th May until 13th July, and in the fresh proclamation of sale issued it was notified that "in the absence of any order of postponement the sale would be held at monthly sales commencing at 6 o'clock on the morning of 13th July 1903 at Monghyr." Owing to the absence of the presiding officer from the station, the monthly sales did not begin until 17th July, and in the course of them the sale in question was held on the 20th. On an application under section 311 of the Civil Procedure Code (Act XIV of 1882) to set aside the sale on the ground of "material irregularity" within the meaning of ss 287 and 291 of the Code · *Held* (affirming the decision of the Courts in India), that in holding the sale on 20th July the Court had not acted in contravention of the provisions of the Code, and there had been no "material irregularity" in publishing or conducting the sale. RANG LAL SINGH *v.* RAVANESHWAR PERSHAD SINGH (1911) **I. L. R. 39 Calc. 26**

SALE OF GOODS

See CONTRACT . **I. L. R. 39 Calc. 568**

——— **contract for—**

See STAMP-DUTY **I. L. R. 39 Calc. 669**

SALE OF MORTGAGED PROPERTY.

See MORTGAGE . **I. L. R. 39 Calc. 527**

SANAD.

See PROOF . . **16 C. W. N. 683**

——— *Sanad, construction of—Grant creating title of Rajah of Deur in 1862 —Meaning of "Lands attached to Deur"—Whether confined to lands in Satara where Deur is situated, or extended to other lands in Bombay Presidency—Use of contemporanea expositio in interpretation of documents—Jaghir, nature of tenure—Saranjam—*

SANAD—*contd.*

Inam—Vatan—Hakk—Nature of evidence in interpreting documents—Alterations of records. The plaintiff and the defendant were brothers, descendants of the Bhonsle family (Rajahs of Nagpur) whose possessions lapsed to the British Government in 1853. The object of the suit was to have it declared that the whole of the property in dispute (all situated in the Bombay Presidency) belonged to the two brothers in equal shares. The elder brother, the defendant (appellant), was Rajah of Deur, and his defence was that he had succeeded to the property in suit under the law of primogeniture, as an appanage to the title of Rajah conferred on him by a sanad issued by the Governor-General, Lord Canning, in 1862 The question depended mainly on the construction of that sanad, in which the expression "lands attached to Deur" has been interpreted by the Courts in India as giving to the defendant only lands in the district of Satara in which Deur is situated, the rest of the lands being declared to be partible between the two brothers. *Held*, by the Judicial Committee (reversing those decisions), that on the true construction of the sanad, a construction indicated by the history of the family and the other documentary evidence in the case, considered on the principle of *contemporanea expositio* as a guide to its interpretation, the defendant was entitled to the whole of the property in the Bombay Presidency, and not only to that in Satara, as an appanage to the title This was to be inferred from the official documents for 50 years, the language used in all of them being applicable to the possessions of the Rajahs in the Bombay Presidency as a whole; from the intention of the Government to make suitable provision for the newly created title, and enable the holder to support it with becoming dignity which he could not do if less were given; and from the facts, as gathered from documents, that the Rajahs (of Nagpur) had properties in the Central Provinces as well as in the Bombay Presidency, and the footing on which the Government had all along proceeded during a long period was to allot the latter as an appanage to the title and the former to be partitioned among the younger sons, which was done in 1887, 1893 and 1899. As to the tenure on which the lands were held, the whole of the lands previous to the re-grant in 1862 were "jaghir" lands, implying no grant of the soil, but a personal grant of the revenues to the grantee. A grant of such lands was personal, not hereditary, and resumable at pleasure. The grant being personal and temporary, the lands were necessarily impartible. The impartibility and unity which attached to personal service was not related to, but, on the contrary, was distinct from, the idea of succession by force of law to the impartible lands; they, therefore, could not be decided to be subject to the rule of primogeniture. The Maratha equivalent for "jaghir" was "saranjam" which came in course of time to be applied to the lands. "Saranjam" was not confined to the lands in Satara as held by the lower Courts. The terms "saranjam" and "inam" were not mutually exclusive.

SANAD—*concld.*

"Inam" was a term of mere generic significance applicable to a Government grant as a whole. Rights in the Bombay Presidency were dealt with comprehensively, and as covered not by one name, but by all or at least many of the names applicable to land and revenue rights as "inam," "saranjam," "vatan," "hakk," etc. The argument to the effect that the Satara property, and that alone, was treated as "saranjam," while the other properties were throughout treated as "inam," was contrary to what were admitted to have been the original entries in the Collector's books. No reliance, therefore, could be placed on such a denomination of those lands. The original state of the records before the so-called "corrections" were made, and not with the doubtful and unexplained interlineations and alterations, was that to which a Court of law should have looked as evidence. Too restricted an application had been made by the Courts below of the term "the lands attached to Deur," which their Lordships were of opinion extended to the whole of the lands in suit which was consequently dismissed. RAGHOJIRAO SAHEB *v.* LAKSHMANRAO SAHEB (1912) . **I. L. R. 36 Bom. 639**

SANCTION.

See CIVIL PROCEDURE CODE, 1908, s. 92.
I. L. R. 36 Bom. 168

SANCTION FOR PROSECUTION.

See CRIMINAL PROCEDURE CODE, s. 195 (*c*).
I. L. R. 34 All. 654

See CRIMINAL PROCEDURE CODE, s. 195 (*7*) (*a*) (*b*) AND (*c*).
I. L. R. 34 All. 197

See CRIMINAL PROCEDURE CODE, ss. 195, 476 . . **I. L. R. 34 All. 602**

See CRIMINAL PROCEDURE CODE, s. 407.
I. L. R. 34 All. 244

See PENAL CODE (ACT XLV OF 1860), ss. 182, 211 . **I. L. R. 34 All. 522**

See USING AS GENUINE A FORGED DOCUMENT . . **I. L. R. 39 Calc. 463**

Sanction refused by Munsif—Appeal—*Sanction granted by Subordinate Judge—Jurisdictional—Criminal Procedure Code (Act V of 1898), s. 195—Civil Courts Act (XII of 1887), ss. 21 and 22—Civil Procedure Code (Act V of 1908), ss. 24 (1) (a) and 115.* A suit having been dismissed by the Munsif and, on appeal, by the Court of Appeal, the defendants applied to the Munsif for sanction to prosecute the plaintiffs for offences under ss. 468 and 471 of the Indian Penal Code. This application was refused, but, on appeal, the Subordinate Judge granted such sanction. *Held*, that the Court of the District Judge was the only Court to which

SANCTION FOR PROSECUTION—*concld.*

Such an appeal would properly lie. *Per* N. R. CHATTERJEA, *J.*—For the purposes of s. 195 of the Criminal Procedure Code, a Munsif is not subordinate to a Subordinate Judge. RAM CHARAN CHANDA TALUKDAR *v.* TARIPULLA (1912) **I. L. R. 39 Calc 774**

SARANJAM.

See SANAD . **I. L. R. 36 Bom. 639**

SCHOLARSHIP.

See DEKKHAN AGRICULTURISTS' RELIEF ACT, S. 2 . **I. L. R. 36 Bom. 199**

SEARCH FOR ARMS.

See TRESPASS . **I. L. R. 39 Calc. 953**

——— *Right of Magistrate to search for arms—Arms Act (XI of 1878), s 25—Judicial functions—Trespass—Criminal Procedure Code (Act V of 1898), ss. 36, 96, 105—Act XVIII of 1850.* In a suit for trespass against the District Magistrate, instituted by one of the zamindars whose cutcherry had been searched and no arms of any kind found : *Held* (reversing the decision of the first Court and of the majority of the Appellate Court, and upholding the decision of BRETT, *J.*), that the search was warranted by the Code of Criminal Procedure (Act V of 1898). A serious offence had been committed against the public tranquillity into which it was the duty of the District Magistrate to enquire and by virtue of his superior rank he was, at Jamalpore, the proper person to conduct the enquiry. By s. 36, Sch. III, and s. 96 of the Code, the power of issuing a search-warrant was among his "ordinary powers," and therefore under s. 105 he had power to direct a search to be made in his presence if he thought it advisable to do so. That being so, it was unnecessary to decide on the other defences set up but, *semble* (agreeing with the majority of the Court of Appeal), that the District Magistrate not having complied with the preliminary condition prescribed by s. 25 of the Arms Act (XI of 1878) could not defend his action under that statute. Also (agreeing with BRETT, *J.*), that the District Magistrate in directing a general search of the plaintiff's cutcherry in view of an enquiry under the Criminal Procedure Code, was acting in the discharge of his judicial functions and had it been necessary might have appealed for protection to Act XVIII of 1850 CLARKE *v.* BRAJENDRA KISHORE ROY CHOWDHRY (1912) **I. L. R. 39 Calc. 953**

SEARCH FOR EXPLOSIVES.

See MAGISTRATE . **I. L. R. 39 Calc. 119**

SEARCH WARRANT.

See MAGISTRATE, JURISDICTION OF. **I. L. R. 39 Calc. 377**

See PUBLIC GAMBLING ACT (III OF 1867), S. 5 . . . **I. L. R. 34 All. 597**

SECOND APPEAL.

See CIVIL PROCEDURE CODE 1882 ss. 584, 585 . . **I. L. R. 34 All. 579**

See COURT-FEES ACT, 1870, S. 17. **I. L. R. 36 Bom. 628**

1. ——— *Chota Nagpur Tenancy Act (Beng. VI of 1908), ss. 87, 224, 264—Civil Procedure Code (Act V of 1908), s. 100—Landlord and tenant.* No second appeal lies to the High Court from the decision of a Judicial Commissioner passed on appeal against the decision of a Revenue Officer, under s. 87 of the Chota Nagpur Tenancy Act. RAGHUBAR SAHI *v.* PROTAP UDOY NATH SAHI DEO (1911) . **I. L. R. 39 Calc. 241**

2. ——— *Sale application for confirmation of, by auction-purchaser against judgment-debtor, under s. 312 of the Code—Auction-purchaser, if a necessary party in a proceeding under s. 311 of the Code—Civil Procedure Code (XIV of 1882), ss 311, 312* No second appeal lies against an order refusing an application by the auction-purchaser against the judgment-debtor, for confirmation of sale, under s. 312 of the Code of Civil Procedure, 1882, inasmuch as such a case between the auction-purchaser and the judgment-debtor cannot be regarded as a proceeding between the parties to the suit or their representatives under s. 244 of the Code. The auction-purchaser is not a necessary party to an application under s 311 of the Code. *Karamat Khan* v. *Mir Ali Ahmed, All. W. N. (1891) 121,* not followed. *Ali Gauhar Khan* v. *Bansidhar, I. L. R. 15 All. 107,* distinguished. SURENDRA MOHINI DEBI *v.* AMARESH CHANDRA CHATTERJI (1912) **I. L. R. 39 Calc. 687**

SECOND MARRIAGE.

See MAHOMEDAN LAW—BIGAMY. **I. L. R. 39 Calc. 409**

SECURITY.

——— for production of insolvent debtor—

See FORFEITURE **I. L. R. 39 Calc. 1048**

SECURITY FOR COSTS.

See CIVIL PROCEDURE CODE, 1908, SCH. I O. XXV, R. 1 AND O. XXXIII, R. 1. **I. L. R. 36 Bom. 415**

SECURITY FOR GOOD BEHAVIOUR.

——— Ostensible means of subsistence—*Return of absconding suspect home on withdrawal of warrant, and residence in his father's house without taking steps to conceal himself to commit an offence—Relevancy of evidence of previous connection with a criminal conspiracy or concealment outside the trying Magistrate's jurisdiction—Support by father possessing substance—Jurisdiction of Magistrate to require a person to give an account of his presence while in another jurisdiction—Criminal Procedure Code (Act V of 1898), s. 109, cls. (a), (b).* Clause (*a*) of s. 109 of the Crimi-

SECURITY FOR GOOD BEHAVIOUR —*concld.*

nal Procedure Code should be read in its entirety The concealment referred to therein must be with a view to committing some offence. Where a person against whom a warrant had been issued, absconded from home for two years, but returned thereto after its withdrawal, and was found living in his father's house, without having taken any particular steps to conceal himself for the purpose of committing any offence thereafter, the fact of previous connection with a criminal conspiracy or of present correspondence with criminals outside the Magistrate's jurisdiction, is not relevant under s 109, though it might form basis or a substantive proceeding under s. 110 A person cannot be called on to furnish security under s 109 in respect of an alleged temporary concealment in his father's house unconnected with any intent to commit an offence, nor with any previous concealment outside the Magistrate's jurisdiction As long as a young man, out of employment, is staying in the house of his father, who is a man of substance and able, if necessary, to support him, he cannot be *held* to be without ostensible means of subsistence. Where the account a person gives of his presence within the limits of a Magistrate's jurisdiction is satisfactory, *e g*, that he has returned to, and is living in, his father's house in strict seclusion on the withdrawal of a warrant against him, he cannot be called upon by such Magistrate to give an account of his presence in any other jurisdiction. SATISH CHANDRA SARKAR *v* EMPEROR (1912) **I. L. R. 39 Calc. 456**

SECURITY TO KEEP THE PEACE.

See CRIMINAL PROCEDURE CODE, ss 107, 145 . . . **I. L. R. 34 All. 449**

SEDITION.

1. ——— **Publication, proof of**—*Necessity of proving, posting or printing and publishing under the directions of the accused, when it is shown that the handwriting is his, and that the seditious matter was actually printed and published—Seditious manuscript transmitted by post but intercepted before it reached addressee—Attempt to commit sedition—Penal Code (Act XLV of 1860), s. 124A.* It is not necessary, in order to establish the fact of publication of seditious matter transmitted through the post office, on a charge under s 124 A of the Penal Code, to prove the actual posting nor that it was printed and published under the directions of the accused. If the seditious writing is shown to be in the handwriting of the accused, and it is further proved that the contents were in fact printed and published, there is sufficient evidence of publication by him: *Regina* v. *Lovett 9 C. & P. 462*, followed. The sending through the post of a packet containing a manuscript copy of a seditious publication with a covering letter requesting the addressee to circulate it among others, when the same was intercepted by another person and never reached the addressee, constitutes an attempt within the purview of s. 124 A of the Penal

SEDITION—*concld*

Code. SURENDRA NARAYAN ADHICARY *v* EMPEROR (1911) . . . **I. L. R. 39 Calc. 522**

2. ——— *Sedition—Publication—Handwriting, proof of—Admissibility and value of expert opinion not based on comparison made in Court with admitted or proved handwriting of the person alleged—Penal Code (Act XLV of 1860), s 124 A —Evidence Act (I of 1872), s. 45.* On a charge under s. 124A of the Penal Code the sending of a pamphlet by post, addressed to a private individual not by name, but by designation as the representative of a large body of students, amounts to publication. It is necessary for the admission of the evidence of a handwriting expert, under s. 45 of the Evidence Act, that the writing with which the comparison is made should be admitted or proved beyond doubt to be that of the person alleged, and that the comparison should be made in open Court in the presence of such person *Cresswell* v *Jackson, 2 F. & F. 24, Cobbet* v. *Kilminster 4 F. & F 490*, and *Phoodee Bibee* v. *Govind Chander Roy, 22 W. R 272*, referred to SURESH CHANDRA SANYAL *v* EMPEROR (1912) **I. L. R. 39 Calc. 606**

SENTENCE.

See OFFENCE COMMITTED ON THE HIGH SEAS . . **I. L. R. 39 Calc. 487**

SERVICE INAM.

——— **resumption of**—

——— *Resumption not a fresh grant and does not put an end to prior encumbrances—Regulation—VI of 1831, s 2—Emoluments granted for gadaba service not within regulation.* Resumption consists in putting an end to the grant, remitting the services and requiring the grantee to pay the full assessment. It has not the effect of putting an end to prior encumbrances. *Gadaba* or bearer service is of a personal nature and an *inam* for such service does not fall within Regulation VI of 1831, where the grantee of an *inam* for *gadaba* service mortgages the *inam* and the *inam* is afterwards resumed by Government, such resumption does not extinguish the mortgages. SREEVADHU YERRANNA *v.* DONKIRA KANNAMMA (1912) . . . . **I. L. R. 35 Mad. 704**

SETTLEMENT.

See KHOJA MAHOMEDAN. **I. L. R. 36 Bom. 214**

——— **construction of**—

——— *Settlement of malikana or dasturat payable to zamindar in 1780—Allowance as compensation for portions of land taken by Government for the creation of jagirs—Liability of jagirdars—Resumption by Government, effect of—Suit for sum referred to as malikana in settlement and account of 1865—Long acquiescence in sum settled in 1780.* This was a suit in which the appellant, the Maharaja of Darbanga, claimed to be paid an annual sum of Rs. 482 odd by the Government of India as *dasturat or malikana*, an

SETTLEMENT—*concld.*

allowance by way of compensation to the proprietors for the loss of their proprietary rights in portions of their land taken by the Government for the creation of jagirs (or revenue-free holdings) and which until resumption by Government was payable by the jagirdars, but for the payment of which on resuming them the Government themselves became liable The claim was based upon an order of 10th May 1865, by which the appellant alleged that the annual malikana payable to him in respect of land called Mauzah Sahu was permanently fixed at Rs. 482-0-3 The defence was that the malikana payable in respect of a jagir known as Meherullah Khan, of which Mauzah Sahu formed part was settled in 1780 at Rs. 796-2-9, and nothing further was recoverable; and that the order made in 1865 did not give the right claimed The sum of Rs 796-2-9 had admittedly been paid to the predecessors in title of the appellant since 1780, and was still being paid to the appellant himself, but he claimed to be paid the sum of Rs. 482 odd in addition His contention was that the fixing of the malikana in 1780 was not a final ascertainment of the rights of his predecessors-in-title in respect of it, but was merely a temporary fixing of the percentage by which the amount should be ascertained from time to time, as it varied together with the variation of the amount of the proceeds of the land. Both Courts in India held that the appellant was entitled to nothing more than the Rs. 796-2-9 already paid to him. *Held* (affirming those decisions), that what was done in 1780 amounted to a final settlement of the owner's rights in respect of the malikana, the payment of which was to be made regularly every year from 1780, no term being fixed That it was regarded as final by the parties concerned, was clear from the fact that the payment was made thenceforward for a century without any suggestion that it was in any way wrong, or was subject to revision The settlement of 1865 only dealt with the method of payment of the malikana. It provided neither for any alteration nor for any addition to the malikana already fixed in 1780. The account attached to the settlement was made for the purposes of the settlement only, and the reference in it to malikana was made merely because the malikana was an item to be taken into account in fixing the annual jama to be paid by the person in whose favour the settlement was made in respect of the mouzahs comprised in the settlement. That this was the right view to take of the settlement of 1865, and the account annexed to it, was confirmed by the fact that no claim was ever made by the appellant for payment of the malikana until 1892, 27 years after the date of the permanent settlement, and that no such payment had ever been made to him. RAMESHWAR SINGH *v.* SECRETARY OF STATE FOR INDIA (1911) . **I. L. R. 39 Calc. 1**

SETTLEMENT AND SURVEY.

See SURVEY AND SETTLEMENT ACT.
I. L. R. 36 Bom 290

SHAREHOLDER.

See COMPANIES' ACT, SS. 28, 45, 61.
I. L. R. 36 Bom. 557

"SHAWLS," MEANING OF.

———— *Railway administration, liability of parcel—Railways Act (IX of 1890), s 75 and Sch II (m)—Value of contents of parcel if to be declared—Alwan—Damages, suit, on—Costs.* The term "shawls" in Sch. III, cl (*m*) of the Railways Act, refers to Indian Shawls of special value, and cannot be taken to apply to articles of inferior value such as *alwans* SARAT CHANDRA BOSE *v.* SECRETARY OF STATE FOR INDIA (1912) . . . **I. L. R. 39 Calc. 1029**

SHEBAIT.

See EXECUTION OF DECREE.
I. L. R. 39 Calc. 298

See HINDU LAW—ENDOWMENT.
16 C. W. N. 108

See LAND ACQUISITION.
I. L. R. 39 Calc. 33

———— *Res judicata—Successor of a shebait, when bound by a decree passed against the shebait—Limitation Act (XV of 1877), Sch. II, Art. 124—Hereditary office of a shebait—Adverse possession of the office* The widow of a *shebait* of a certain temple who succeeded her deceased husband in that office, mortgaged some land, as also her interest in the temple-income, to one *J*, who obtained a decree on his mortgage on the 24th of September 1880 In execution thereof he put up the temple-income for sale, purchased it himself and obtained delivery of possession in 1892 The widow and the next reversioner then brought a suit to set aside the sale on the ground that the property sold was not saleable. That suit was withdrawn with liberty to bring a fresh suit The widow alone then brought another suit which was dismissed on the ground that it was barred by s. 244 of the Code of Civil Procedure (Act XIV of 1882). She having died, the reversioner brought a suit against the said *J*, on the 3rd of January 1910, for a declaration that he was entitled to the temple-income inasmuch as it was not saleable On objections taken by the defendant that the suit in so far as it related to the temple-income was barred by the rule of *res judicata* and by limitation: *Held*, that, inasmuch as there was no collusion or dishonesty about the former suits, and as in one of them the plaintiff himself was a party, the decree passed in the suit against the *shebait* (widow) would bind her successor (the plaintiff), and that therefore the present suit was barred by the rule of *res judicata*. *Held*, further, that Art. 124 of Sch II of the Limitation Act applied to the case, and that as the suit was brought more than twelve years after the date when the defendant obtained possession of the hereditary office by receipt of the temple-income, it was barred by limitation. JHARULA DAS *v* JALANDHAR THAKUR (1912) . . **I. L. R. 39 Calc. 887**

SHEIKH ANSARIS, TRIBE OF.

See CUSTOM . **I. L. R. 39 Calc. 418**

SHIVARPANA.

See CIVIL PROCEDURE CODE, 1882, s. 539. **I. L. R. 36 Bom. 29**

SHORT DELIVERY.

See CARRIERS . **I. L. R. 39 Calc. 311**

SIMULTANEOUS ADOPTION.

See HINDU LAW—ADOPTION. **I. L. R. 39 Calc. 582**

SISTER.

See HINDU LAW—SUCCESSION. **I. L. R. 39 Calc. 319**

SISTER'S SON.

See HINDU LAW—SUCCESSION. **I. L. R. 39 Calc. 319**

SMALL CAUSE COURT.

See PROVINCIAL SMALL CAUSES COURTS ACT . . **I. L. R. 36 Bom. 443**

——— error by—

See HIGH COURT, JURISDICTION OF. **I. L. R. 39 Calc. 473**

——— *Provincial Small Cause Court, if may decide title—Procedure—Mesne profits if recoverable when plaintiff out of possession—What must be proved—Petty case, pecuniary value not an unfailing test.* In a Small Cause Court suit the Judge is no doubt competent to decide the question of title upon which the claim depends, but if he does so it is incumbent on him to decide the question correctly and according to law. The maxim *de minimis non curat lex* should not be applied to Small Couse Court suits for damages in respect of immoveable property for the importance of the case to the parties is, not to be measured by the pecuniary limit of their claim *Poona City* v. *Ramjit, I. L. R. 21 Bom. 250*, referred to. ELAHI BUKSH MANDAL *v* RAM NARAYAN GHOSE (1911) . . . **16 C. W. N. 288**

SOLICITOR.

——— duty of—

See GIFT . **I. L. R. 39 Calc. 933**

——— *Professional misconduct—Proceeding to strike off from Rolls—Contempt of Court; pursuing remedy in Criminal Court when Supreme Court refused civil remedy, having disbelieved information, if amounts to Forgery, striking out names of witnesses' names by solicitor, after informing responsible officer—Intent to defraud, if any—Bad faith—Right to be heard on matters relating to professional misconduct.* Where a plaintiff who has been refused a warrant for the detention of the defendant by a Civil Court straight way starts a criminal process on the same subject-matter and by means of allegations to which the

SOLICITOR—*concld.*

Civil Court attached no credit obtains his warrant from a different Court, almost as a matter of course, he undoubtedly runs several risks of a serious character. He is not, however, restricted by law to a single form of remedy. He may pursue all the legal remedies appropriate to his grievance, and his conduct does not necessarily involve any punishable contempt of the Civil Court whatever may be its other consequences. Where in such a case the arrest by warrant of the Criminal Court was obtained without getting the necessary *fiat* of Government, and it was executed but the prisoner was then discharged on the ground that the warrant was in excess of the Magistrate's jurisdiction and it appeared that the Magistrate was not misled into issuing the warrant by any concealment or deceit on the part of the applicant, but that it might have been due to the Magistrate's own inadvertence, and there was no evidence to show that the applicant did not believe in the justice of his claim and did not so instruct the solicitor who acted for him in the matter: *Held*, that the conduct of the solicitor, though it might from other points of view be shown to be open to strong animadversion, could not in the absence of proof that the proceedings were tainted by his fraud be held to constitute contempt of Court, nor did it show bad faith on the part of the solicitor. Where two persons, on being served with subpœnas taken out by the solicitor on behalf of certain accused persons stated that they knew nothing of the case, and thereupon the solicitor took back the subpœnas and mentioned to a responsible Court officer that he wanted the names of witnesses to be substituted, and on his making no objection struck out their names and substituted those of two other persons in their place: *Held*, that there being nothing to show that the intent of the solicitor in so doing was to defraud, the facts did not establish the charge of forgery brought against him, who at most had committed an irregularity and for which a pecuniary penalty of £20 imposed on him was an adequate punishment. That an order striking the solicitor's name from off the Rolls on account of the said two alleged offences of contempt and forgery, could not in the circumstances be maintained. References in the order to the solicitor's "conduct in other professional matters," when no such matters were specified in the information before the Court and upon which the solicitor had not been heard, could not be relied on against him. *In the matter of* TAYLOR . . **16 C. W. N. 386**

SON.

——— liability of—

See HINDU LAW—DEBT. **I. L. R. 39 Calc. 862**

See HINDU LAW—SURETY. **I. L. R. 39 Calc. 843**

SOVEREIGN RIGHTS.

See ACT OF STATE. **I. L. R. 39 Calc. 615**

SPECIFIC PERFORMANCE.

See LEASE. **I. L. R. 39 Calc. 663**

See SPECIFIC RELIEF ACT, 1877, s. 30 **I. L. R. 34 All 43**

1. ——— *Right to minor of specific performance of contract entered into on his behalf by his guardian and manager of his estate—Contract for purchase of immoveable property and sale of it to minor—Power of guardian and manager—Want of mutuality.* In a suit for specific performance by a minor of an agreement for the purchase and sale to him of certain immoveable property, entered into by the manager of the minor's estate and his guardian on his behalf *Held*, by the Judicial Committee, that it was not within the competence, either of the manager of the minor's estate or of the guardian of the minor, to bind the minor or the minor's estate by a contract for the purchase of immoveable property; that as the minor was not bound by the contract, there was no mutuality; and that consequently the minor could not obtain specific performance of the contract. MIR SARWARJAN *v.* FAKHRUDDIN MAHOMED CHOWDHURY (1911) . **I. L. R. 39 Calc. 232**

2. ——— *Specific performance of contract—Contract executed in exercise of power given by will—Will found false—Enforcement against executant as heir—Delay in suing, not amounting to waiver or acquiescence, if bar to relief.* The widow of the deceased owner jointly with another who as executor had obtained probate of a will alleged to have been left by the deceased executed an agreement for sale of land, the widow purporting thereby to exercise a power given by the will to assent to conveyances executed by the executor The probate subsequently having been revoked: *Held*, that the contract was specifically enforceable against the widow to the extent of her interest. *Horrocks* v. *Rigby, 9 Ch. D. 180*, relied on. Delay which did not amount to waiver, abandonment or acquiescence and in no way altered the position of the defendant, did not disentitle the plaintiff to sue for specific performance. *Kissen Gopal Sadaney* v. *Kali Prosonno Sett, I L. R. 33 Calc. 633*, followed; *Mokund Lal* v. *Chotay Lal, I L. R. 10 Calc.* 1061, referred to. In the special circumstances of the case, specific performance of the contract was refused. KEDAR NATH SAMANTA *v.* MANU BIBI (1911) **16 C. W. N. 247**

SPECIFIC RELIEF ACT (I OF 1877).

——— s. 2—

See COURT-FEE . **I. L. R. 39 Calc. 704**

——— s. 18—

See CIVIL PROCEDURE CODE, 1882, 325A. **I. L. R. 36 Bom. 510**

——— s. 30—

——— *Specific performance—Award—Suit to recover money payable under an award—Limitation Act (IX of 1908), Sch. I, Art. 113, 116, 120—Limitation.* By the terms of an award it was provided, *inter alia*, that the defendants should pay to the plaintiff the sum of Rs. 350 on or before the 27th of June 1904, and in default of such payment, the plaintiff could recover from the defendants Rs. 350 with interest at 12 per cent. per annum *Held*, that a suit to recover on default of payment by the stipulated date, the sum abovenamed with interest was not a suit for specific performance of a contract, and as such governed by Art. 113 of the First Schedule to the Indian Limitation Act, 1908, but was governed by either Art 116 or Art. 120. *Sukho Bibi* v. *Ram Sukh Das, I. L. R. 5 All. 263; Raghubar Dyal* v. *Madan Mohan Lal, I L. R. 16 All 3; Sheo Narain* v. *Beni Madho, I. L R. 23 All 285; Sornavalli Ammal* v. *Muthayya Sastrigal, I. L. R. 23 Mad. 593; Talewar Singh* v. *Bahori Singh, I. L R. 26 All. 497* and *Bhajahari Saha Bamikya* v. *Behary Lal Basak, I. L. R. 33 Calc. 881.* KULDIP DUBE *v.* MAHAUL DUBE (1911) . **I. L. R 34 All. 43**

——— s. 30—*concld.*

——— ss. 39, 42—

See CIVIL PROCEDURE CODE, 1908, O.XLI, R. 22 . . **I. L. R. 34 All. 140**

——— s 42—

1. ——— *Declaratory decree, when should be made and when refused—Consequential relief, injunction if* S 42 of the Specific Act does not sanction every form of declaration but only declaration that the plaintiff is entitled to any legal character or to any right as to any property. Courts in this country should see that plaints which pray for declaratory decrees only, conform to the terms of s. 42, Specific Relief Act. An injunction is a consequential relief The limit imposed by s. 42 of the Specific Relief Act is on decrees which are merely declaratory and does not expressly extend to decrees in which relief is administered and declarations are embodied as introductory to that relief. For such declarations legislative sanction is not required as they rest on long established practice. But for all that the Court should be circumspect and even chary as to the declarations it makes; it is ordinarily enough that relief should be granted without the declaration. DEOKALI KOER *v.* KEDAR NATH (1912) **16 C. W. N. 838**

2. ——— *Fabrication of authority to adopt by widow does not justify suit by reversioner for declaring the authority not genuine.* The mere fabrication of an authority to adopt by the widow, will not entitle the reversioner to claim a declaration under s. 42 of the Specific Relief Act that the authority is not genuine. SREEPADA VENKATARAMANNA *v.* SREEPADA RAMALAKSHMAMMA (1912.) . . **I. L. R. 35 Mad. 592**

——— s. 45—

See MUNICIPAL ELECTION. **I. L. R. 39 Calc. 598, 754**

SPIRITUOUS AND FERMENTED LIQUORS.

See EXCISEABLE ARTICLES.
I. L. R. 39 Calc. 1053

STAMP.

See STAMP ACT (II OF 1899), s. 65
I. L. R. 34 All. 192

STAMP ACT (II OF 1899).

——— **s. 2 (15), Sch. I, Art. 45—**

——— *Final decree effecting partition, what is* To make an order chargeable with stamp duty under s 2 (*15*) of the Stamp Act of 1899, it must effect an actual division of the property An order declaring the rights of the parties and directing further proceedings for the ascertainment of the specific shares is not such an order. Courts ought not to pass *interim* orders and direct proceedings in execution for the ascertainment of the specific shares. The final order should be passed after the specific shares have been ascertained A decree reciting a *razinamah* made by consent of parties, allotting specific properties to the several parties and directing other parties to deliver possession, is chargeable with stamp duty under Art 45 of Sch I as a final order effecting partition within sec 2 (*15*). Being made by consent of parties, it is also an instrument whereby co-owners have agreed to divide property in severalty, and falls within the first part of s 2 (*15*) THIRUVENGADATHAMIAH *v* MUNGIAH (1911)
I. L. R. 35 Mad. 26

——— **ss. 5, 6, 36; Sch. I, Arts. 5, 43—**

See STAMP DUTY **I. L. R. 39 Calc. 669**

——— **s. 65—**

——— *Receipt—Money remitted by postal money order and receipt signed on post office form—Further receipt not exigible from payee.* Where money is remitted by postal money order and the payee has signed the receipt in duplicate on the post office form, he cannot legally be compelled to give a further receipt to the payer, and his refusal to do so will not render him liable under s, 65 of the Indian Stamp Act, 1899. EMPEROR *v.* BALMAKAUND (1911) . **I. L. R. 34 All. 192**

——— **Sch. I, Art. 1—**

See ACKNOWLEDGMENT
I. L. R. 39 Calc. 789

STAMP DUTY.

See ACKNOWLEDGMENT.
I. L. R. 39 Calc. 789

——— *Bought and sold notes—Stamp Act (II of 1899), ss 5, 6 and 36, Sch I, Arts. 5 and 43—Arbitration—Admission, by arbitrators, of document not duly stamped, effect of—Bengal Chamber of Commerce, arbitration by—Rules relating to—Umpire, omission to nominate, effect of—Disclosure of names of arbitrators if contemplated by the rules—Reference, provision for appearance of parties on* A contract for or relating to the sale of goods comprised in bought and sold notes, which contain a provision to refer disputes to arbitration, is chargeable with a stamp duty of two annas on each broker's note under Art 43 of the Stamp Act, and not with a duty of eight annas as an agreement, *Kyd* v. *Mahomed, I L. R. 15 Mad 150*, followed. If a document, which is not duly stamped, were admitted in evidence by arbitrators on a reference, the provisions of s. 36 of the Stamp Act would prevent such admission being called into question at any stage of the same suit or proceeding except as provided in s. 61, and an application to file the award of the arbitrators would be a "stage of the same proceeding" The arbitration rules of the Bengal Chamber of Commerce, grammatically speaking, require an umpire to be nominated before the arbitrators enter upon the reference, but the omission to so nominate an umpire would not be a ground for setting aside or varying the award having regard to the provisions of rule VI (*o*) The arbitration rules of the Bengal Chamber of Commerce (rule X) contemplate that the names of the arbitrators shall not be disclosed to the parties *Choonı Lall* v *Madhoram, I L. R. 36 Calc. 388; 13 C W. N 297*, and *Hurdwary Mull* v. *Ahmed Musaji Selaji, 13 C. W N. 63*, dissented from. Rule VI (*g*) provides that the parties shall not, without the express permission of the arbitrators, be entitled to appear The parties have no right to appear, or even to ask for such permission. BOMBAY COMPANY, LTD *v* THE NATIONAL JUTE MILLS CO, LTD (1912)
I. L. R. 39 Calc 669

STATUTE.

——— **1848—11 and 12 Vict., C. XXI—**

See INDIAN INSOLVENCY ACT.

STATUTE, CONSTRUCTION OF.

See LIMITATION ACT, ART. 134.
I. L. R. 36 Bom. 146

——— *Statute—Construction.* Where a statute creates a right not existing at common law and prescribes a particular remedy for its enforcement, then that remedy alone must be followed. CHUNILAL VIRCHAND *v* AHMEDABAD MUNICIPALITY (1911) . **I. L. R. 36 Bom. 47**

STEP-SISTER'S SON.

See HINDU LAW—SUCCESSION.
16 C. W. N. 1094

STIPEND.

See DEKKHAN AGRICULTURISTS' RELIEF ACT, s. 2 . **I. L. R. 36 Bom. 199**

STREET.

See BOMBAY MUNICIPAL ACT, s 297 (*1*) *b*,
I. L. R. 36 Bom. 405

STRIDHAN

See HINDU LAW—INHERITANCE
I. L. R. 34 All. 234

See HINDU LAW—STRIDHAN
I. L. R. 36 Bom. 339, 424

See HINDU LAW—SUCCESSION
I. L. R. 39 Calc. 319

SUB-DIVISIONAL MAGISTRATE.

——— subordination of—

See MAGISTRATE, JURISDICTION OF.
I. L. R. 39 Calc. 1041

SUB-MORTGAGE.

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 90 . **I. L. R. 34 All. 63**

SUBORDINATE JUDGE.

See SANCTION FOR PROSECUTION
I. L. R 39 Calc. 774

SUBROGATION.

See MORTGAGE . **16 C. W. N. 505**

SUCCESSION.

See AGRA TENANCY ACT (II OF 1901), S 22,
I. L. R. 34 All. 419, 658

See HINDU LAW—STRIDHAN
I. L. R. 39 Calc. 319

See HINDU LAW—STRIDHAN
I. L. R. 36 Bom, 120, 339

See HINDU LAW—SUCCESSION.
I. L. R. 34 All. 65, 79, 663

See HINDU LAW—SUCCESSION.
I. L. R. 35 Mad. 152

See KUNJPURA, STATE OF.
I. L. R. 39 Calc. 711

SUCCESSION ACT (X OF 1865).

——— ss. 46, 48, 50—

See PROBATE . **I. L. R. 39 Calc. 245**

——— s. 90—

See HINDU LAW—WILL
I. L. R. 39 Calc. 87

SUCCESSION CERTIFICATE.

See SUCCESSION CERTIFICATE ACT.

SUCCESSION CERTIFICATE ACT (VII OF 1889).

——— s. 4—

——— *Deferred dower, suit by one of several heirs for a portion of her share—Certificate for a portion, if may be granted—Heir's claims if joint or several—Severence of debt.* Where one of several heirs of a deceased Mahomedan lady sued her husband for a portion of the share of the deferred dower due by the defendant to the deceased, relinquishing the balance · *Held*, that an application by the plaintiff for succession certificate in respect of the amount claimed by her in the suit was properly granted. S. 4 of the Succession Certificate Act does not require that the certificate should cover the whole of the debt, if the heirs do not see to realise the whole *Ghafur Khan* v. *Kalandari Begum, I L R 33 All. 327*, dissented from. In respect of deferred dower, each of the heirs of the deceased has a distinct right enforceable by himself though all may jointly sue and it is open to each to relinquish a portion of the claim. The defendant husband being moreover one of the heirs, the debt, assuming it to be joint, is severed, and a certificate cannot in consequence be granted for the whole debt. ABDUL HOSSAIN *v.* SARIFAN (1911) . . . **16 C. W. N. 231**

——— ss. 9, 25, 26—

——— *Civil Procedure Code (Act V of 1908), s. 96—Succession Certificate—Condition of Security—Appeal* An order granting a succession certificate accompanied by a condition that security should be given, is appealable An order directing that a certificate should not be granted unless security is furnished, is not appealable *Bai Devkore* v *Lalchand Jivandas, I L R. 19 Bom. 790*, explained. BAI NANDKORE *v* SHA MAGANLAL VARAJBHUKHANDAS (1911)
I. L R. 36 Bom. 272

——— ss. 19, 26—

——— *Munsif invested with functions of District Court—Appeal—Jurisdiction. Held*, that an appeal from an order of a Munsif invested under s. 26 of the Succession Certificate Act, 1889, with the functions of a District Court lies to the District Judge and cannot be transferred for disposal to any other Court, such as the Subordinate Judge or Judge of the Small Cause Court, not empowered under s 56. HURAN BIBI *v.* HINGAN BIBI (1911)
I. L. R 34 All. 148

SUCCESSIVE ADOPTION.

See HINDU LAW—ADOPTION
I. L. R. 39 Calc. 582

SUICIDE.

See BAIL BOND . **16 C. W. N. 550**

SUIT.

——— dismissal of—

See CIVIL PROCEDURE CODE, 1908, O. IX, RR 8 AND 9, S. 151
I. L. R 34 All. 426

See CIVIL PROCEDURE CODE, 1908, O. XVII, R 3; O. IX, R 4.
I. L. R. 34 All. 123

SUIT FOR LAND.

See JURISDICTION.
I. L. R. 39 Calc. 739

SUMMARY CESS.

See LIMITATION ACT, 1877, SCH. II, ART. 144 . . I. L. R. 36 Bom. 174

SUMMARY DISMISSAL.

See CIVIL PROCEDURE CODE 1908, O. XLI, R. 11 . . I. L. R. 36 Bom. 116

SUMMARY TRIAL.

——— *Charge if should be drawn up in.* Although in a summary trial the Magistrate need not frame a formal charge, still he must specify the offence charged in such a way as will give sufficient notice to the accused. JHARU SHEIKH *v.* KING-EMPEROR (1912)
16 C. W. N. 696

SUNNIS.

See MAHOMEDAN LAW—GIFT.
I. L. R. 34 All. 478

SURETY.

——— Father's liability as surety—*Hindu Law—Whether son is liable to pay debt incurred by father as surety.* Under the Hindu Law, a son is liable for a debt incurred by his father as a surety. *Tukarambhat* v. *Gangaram Mulchand Gujar, I. L. R. 23 Bom. 454,* and *Maharaja of Benares* v. *Ramkumar Misir, I. L. R. 26 All. 611,* referred to. RASIK LAL MANDAL *v* SINGHESWAR RAI (1912) . . I. L. R. 39 Calc. 843

SURETY BOND.

See DECREE . I. L. R. 36 Bom. 42

SURVEY AND SETTLEMENT ACT (BOM. I OF 1865).

——— ss. 25, 28, 37, 38—

——— *Land Revenue Code (Bom. Act V of 1879), ss. 102, 106—Khoti village in Kolaba District—Survey and settlement—Introduction of "sanctioned" settlement—"Fixed or guaranteed"—Expiration of the period of "sanctioned" settlement—Continuance of the terms of the "sanctioned" settlement after the expiration of the period as still being sanctioned.* A question having arisen as to whether under the settlement of the khoti village in suit which was sanctioned in 1863 and introduced in 1865 subject to all the provisions of the Survey and Settlement Act (Bom. Act I of 1865), and thereafter for a fixed period of twenty-seven years, the Government was entitled, on the expiration of the said period of twenty-seven years, to insist upon the terms imposed upon the Khot as between him and his tenants under the settlement as still being sanctioned: *Held,* that in 1892 when the fixed period of the settlement sanctioned in 1863 and introduced in 1865 came to an end, the terms which had been imposed upon the Khot under s. 38 of the Survey and Settlement Act (Bom. Act I of 1865), when that settlement was introduced, remained in force, since the settlement itself must be deemed to have been then and still to have been sanctioned and that Government was within its rights in insisting upon the Khot accepting certain clauses in the *kabuliyat* of that year. SECRETARY OF STATE FOR INDIA *v.* SADASHIV ABAJI (1911) . . I. L. R. 36 Bom. 290

SURVEY AND SETTLEMENT ACT (BOM. I OF 1865)—*concld*

——— ss. 25, 28, 37, 38—*contd.*

SURVIVING MEMBER OF COMMITTEE.

——— suit by—

See RELIGIOUS ENDOWMENT.
I. L. R. 39 Calc. 304

SYMBOLICAL POSSESSION.

See LIMITATION . I. L. R. 36 Bom. 373
See RIOTING . I. L. R. 39 Calc. 896

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TALAB-I-MAWASIBAT.

See PRE-EMPTION . I. L. R. 34 All. 1

TANK.

See ESTOPPEL . I. L. R. 39 Calc. 439

TEISHKHANA PAPER.

——— *Evidence—Official record—Road-cess returns—Bengal Cess Act (IX of 1880), s. 95—Road-cess return filed by a co-sharer landlord, and assessment made on the basis of it—Whether such return is admissible in evidence against the other co-sharers. Teishkhana* paper is a register kept for the information of the Collector, but it is in no sense an official record; therefore, before a *teishkhana* paper could be used in evidence, it must be proved that it had been kept in due course by the registered patwari. *Baijnath Singh* v. *Sukhu Mahton, I. L. R. 18 Calc. 534,* and *Samar Dasadh* v. *Juggul Kishore Singh, I. L. R. 23 Calc. 366,* distinguished. Persons interested to the extent of a one-fourth share of the superior interest filed a road-cess return under the provisions of the Bengal Cess Act, and they stated therein, as they were bound to do under the law, the names of the tenants in occupation of specific lands. The statement which they made was against their interest. No similar return was filed by the persons who represented the remaining three-fourths share of the superior interest, and the Revenue authorities assessed the road-cess, as they were entitled to do, upon the return filed by the one-fourth shareholders. *Held,* that the return filed by the one-fourth shareholders is admissible in evidence as against the remaining shareholders of the superior interest. *Nusseerun* v

TEISHKHANA PAPER—*concld.*

Gouree Sunkur Singh, 22 W. R. 192, distinguished. S. 95 of the Bengal Cess Act (IX of 1880) is not exhaustive. It was intended to restrict the operation of s. 21 of the Evidence Act, and a road-cess return may be admissible in evidence as against persons other than the one who has made the return. CHALHO SINGH *v.* JHARO SINGH (1911) **I. L. R. 39 Calc. 995**

TEMPLE.

See IDOL . . **I. L. R. 36 Bom. 135**

TENANTS.

See BOMBAY MUNICIPAL ACT, SS. 379, 379A . . **I. L. R. 36 Bom. 81**

TENANTS-IN-COMMON.

See CIVIL PROCEDURE CODE, 1882, SS. 13, 462 . . **I. L. R. 36 Bom. 53**

TESTAMENTARY CAPACITY.

See PROBATE . **I. L. R. 39 Calc. 245**

THAK MAP.

——— *Thakbust maps, value of, as evidence—Condition of land how far affects value of thak maps—Map prepared by Government on behalf of private proprietor, how proved—What circumstances must be established before using such map against a party—Indian Evidence Act (I of 1872), ss. 74, 83, 90—Applicability to private maps made at the instance of Collector—Ss. 12, 13—Admissibility to prove assertion of title.* S. 90 of the Indian Evidence Act only shows that a document was prepared at the time at which it purports to have been made by the officer whose signature it bears, but it does not establish the accuracy of the document. The question whether a map is a public document within the meaning of s. 74 of the Evidence Act is *primâ facie* a question of fact, and the fact that a map was treated as a public document in a previous suit to which the plaintiff was not a party would not make it binding as such on the plaintiff. A map prepared at the instance of the Collector when in charge of a private estate is a private document and s. 83 of the Evidence Act has an application to such map. So before such a map can be used against a party not only must its accuracy be strictly proved, but other circumstances which may affect its evidentiary value such as the purpose for which the map was prepared, must be duly considered; for a map prepared for one purpose cannot be used for a totally different purpose, and in considering the value of such maps the Courts must consider how far the boundaries now in dispute had been in contemplation when the map was prepared. Such a map, unless proved to have been prepared with the assent or at any rate the knowledge of a party, is of very little value as evidence against such party; and in the absence of signature of the parties on the map the mere recital on the map that other persons had notice of the proceedings would not be conclusive. Although the evidentiary

THAK MAP—*concld.*

value of a thak map would be affected by the condition of the lands at the time of the survey, the map cannot be ignored merely on a general allegation that the lands were jungle at the time without considering whether it was still capable of being surveyed. Possession of jungle lands is *primâ facie* with the person whose title is established. PRIYA NATH MAJUMDAR *v.* MAHENDRA KUMAR MITRA (1911) . . . **16 C. W. N. 317**

THEFT.

See PENAL CODE (ACT XLV of 1860), S. 379 . . **I. L. R. 34 All. 89**

THUMB-IMPRESSION.

——— *Evidence—Taking of thumb-impression out of Court without objection made—Admissibility of such impression in a subsequent trial for giving false evidence—Evidence Act (I of 1872), s. 132, and proviso—Penal Code (Act XLV of 1860), s. 193.* Where a Magistrate, believing that the complainant had given false evidence in the course of a trial, by denying the fact of a previous conviction, had his thumb-impression taken out of Court, for the purpose of identification in a future prosecution under s. 193 of the Penal Code, and there was nothing to show that the latter had objected to the taking of it: *Held*, that the thumb-impression was admissible in a subsequent trial for giving false evidence, and that the proviso to s. 132 of the Evidence Act was not applicable, masmuch as (i) the taking of such an impression was not equivalent to asking a question and receiving an answer, (ii) no objection was made to the taking of it, and (iii) it was not taken in the course of a trial. *Queen* v. *Gopal Doss, I. L. R. 3 Mad. 271,* and *Moher Sheikh* v. *Queen-Empress, I. L. R. 21 Calc. 392,* referred to. TUNOO MIA *v.* EMPEROR (1911) **I. L. R. 39 Calc. 348**

TITLE.

See BOMBAY IMPROVEMENT ACT, 1898. **I. L. R. 36 Bom. 203**

See SMALL CAUSE COURT. **16 C. W. N. 288**

——— priority of—

See COMPANY . **I. L. R. 36 Bom. 334**

TITLE OF DONEE.

See CONTRACT ACT, S. 19. **I. L. R. 36 Bom. 37**

TORT.

——— *Overflow of water into plaintiff's land from tank belonging to stranger caused by defendant lowering level of his own land to make it culturable—Plaintiff's right to injunction and damages.* Where the defendants with a view to make their land culturable lowered its level with the consequence that water in a tank belonging to a third party passed to that land and subsequently overflowed into lands belonging to the plaintiff:

TORT—*concld.*

Held, that no right of the plaintiff had been infringed by the act, and the plaintiff was not entitled to a mandatory injunction to compel the defendant to raise an embankment in order to prevent this overflow or to damages for harm caused by such overflow. *Rylands* v. *Fletcher, L. R. 3 H. L 330*, distinguished. *Smith* v. *Kenrick, 7 C. B. 515, Nield* v. *London and N. W. Ry Co., L. R. 10 Ex. 4*, referred to. Where the owner of land without wilfulness or negligence uses his land in the ordinary manner though mischief thereby accrues to his neighbour he is not liable for damages, but if with a view to use the land in an unusual manner he brings upon the land water, which would not naturally have come upon it, he will be liable for damages for the escape of the water, into the land of his neighbour *Hodgson* v. *Mayor, etc., of York, 28 L. T. 836, Chasemore* v. *Richards, 7 H L Cas. 349*, relied on. KENARAM AKHULI *v.* SRISTIDHAR CHATTERJEE (1912) . . **16 C. W. N. 875**

TRANSFER.

See CRIMINAL PROCEDURE CODE, SS. 145, 526 . . **I. L. R. 34 All. 533**

See CRIMINAL PROCEDURE CODE, S 407. **I. L. R. 34 All. 244**

See TRUSTS ACT, S. 5. **I. L. R. 36 Bom. 396**

——— **of shares—**

See COMPANY **I. L. R. 36 Bom. 334**

——— *Notification by Local Government, empowering a particular Judge to deal with a part-heard case pending in another Court, how far legal—Civil Procedure Code (Act V of 1908), s. 92—Power of District Judge to transfer a case from his file, by virtue of such notification.* A notification by the Local Government under s. 92 of the Civil Procedure Code (Act V of 1908), directed to a particular Judge and purporting to deal with a particular litigation, which was already pending in the Court of the District Judge, is *ultra vires*. A District Judge, therefore, has no power to transfer a case brought under s. 92 of the Civil Procedure Code, which was pending in his Court, to the Court of a particular Subordinate Judge, who was empowered by Local Government to try it, by virtue of such a notification. ABDUL KARIM ABU AHMED KHAN *v.* ABDUS SOBHAN CHOWDHRY (1911) . . **I. L. R. 39 Calc. 146**

TRANSFER OF PROPERTY ACT (IV OF 1882)

——— **ss. 4, 105, 107—**

See KABULIYAT **I. L. R. 39 Calc. 1016**

——— **s. 6—**

See CONTRACT OF SALE **I. L. R. 36 Bom. 139**

——— **s. 38—**

See HINDU LAW—DEBT. **I. L. R 35 Mad. 108**

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd*

——— **s. 41**—*Ostensible owner—Owners of property minors at date of transfer—Act (Local) No. II of 1901, s 201.* The owner of certain zamindari property died leaving him surviving a widow and two minor sons. During the minority of the sons their mother not only got herself recorded in respect of one-third of the property left by the husband (her proper share being one-eighth and the balance being her sons), but she mortgaged it to one *N*. *N* sold his rights to *R* who brought a suit for sale on his mortgage and having brought the property to sale purchased it himself He subsequently transferred it to *M*. *M* brought a suit for profits against the sons and got an *ex parte* decree. *Held*, on suit by the sons for declaration of title to their share in the property excluding the one-eighth belonging to their mother or in the alternative for possession, (1) that the suit was not barred by the provisions of s. 41 of the Transfer of Property Act, 1882, and (2) that the proviso to s 201 of the Agra Tenancy Act, 1901, protected the present suit. *Dalibai* v. *Gopibai, I L R. 26 Bom 43*, and *Dambar Singh* v *Jawitri Kunwar, I. L. R 29 All. 292*, referred to. ABDULLAH KHAN *v.* MUSAMMAT BUNDI (1911) **I. L. R. 34 All. 22**

——— **s. 43—**

See CIVIL PROCEDURE CODE, 1882, S. 325 A . . **I. L. R. 36 Bom. 510**

——— **s. 55, cl. (4)**—*Vendor has no absolute title to interest in all cases irrespective of equities—Right of vendor in possession to interest.* S. 55, cl. (4) of the Transfer of Property Act, does not give the vendor an absolute title to interest in all cases irrespective of equities. It only provides that the vendor shall have a lien for interest when it is payable. Interest on the purchase money cannot be claimed so long as the vendor remains in possession of the property sold. MUTHIA CHETTY *v.* SINNA VELLIAM CHETTY (1912) **I. L R 35 Mad. 625**

——— **ss. 58, 100—**

See MORTGAGE . **I. L. R. 34 All. 446**

——— **s. 59—**

See USUFRUCTUARY MORTGAGE. **I. L. R. 39 Calc. 227**

1. ——— **Attestation—Mortgage**—*Executant if may attest so as to bind co-executants—Improperly attested mortgage-bond, if operates as a charge.* A party to a document cannot under any circumstances be allowed to sign a document as an attesting witness and a person who has once signed as an executant of a mortgage-bond and as one of the persons who were borrowing the money on the bond cannot be allowed to have his position altered from an executant of the bond to that of a witness for the purpose of rendering the document valid as a mortgage against the other executants. DEBENDRA CHANDRA ROY *v* BEHARI LAL MUKERJEE (1912) . **16 C. W. N. 1075**

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

——— **s. 59**—*contd*

2. ——— The "attestation" of certain mortgage-deeds by two witnesses required by s. 59 of the Transfer of Property Act is attestation of the actual fact of the execution. *Ganga Dei* v. *Shiam Sundai*, *I L R 26 All 69*, overruled SHAMU PATTER *v* ABDUL KADIR RAVUTHAN (1912) . . . . **16 C W. N. 1009**

3. ——— *Mortgage-bond—Attestation by only one witness—Bond judicially found to be invalid and unenforceable—Government notification—Retrospective effect—Exemption of certain Districts from the operation of s. 59 of the Transfer of Property Act (IV of 1882)—Subsequent suit to enforce the mortgage—Res judicata—Rights vested under decrees not affected.* In execution under a money-decree certain property mortgaged to the plaintiff on the 8th September 1893 was attached and was about to be brought to sale The plaintiff, thereupon, applied that the property should be sold subject to his mortgage lien. The Court rejected the plaintiff's application on the ground that the mortgage-bond was invalid and not enforceable because it was attested by only one witness and not by two as required by s 59 of the Transfer of Property Act (IV of 1882) The plaintiff, thereupon, brought a suit in the year 1905 for a declaration that his mortgage-bond was valid and operative according to law and, therefore, enforceable The suit came up in second appeal to the High Court which, on the 14th August 1908, finally decided that the plaintiff's mortgage was void and, therefore, inoperative under s. 59 of the Transfer of Property Act (IV of 1882) In the meanwhile, on the 24th June 1908, the Government of Bombay issued a notification exempting certain districts including the Poona District in which the mortgaged property was situate, from the operation of s. 59 of the Transfer of Property Act (IV of 1882) The notification was given a retrospective effect from the 1st January 1893. On the strength of the said notification, the plaintiff applied to the High Court for review of judgment and his application being rejected, he, in the year 1910, instituted the present suit to enforce his mortgage and both the lower Courts having rejected the claim on the ground of *res judicata*, the plaintiff preferred a second appeal: *Held*, confirming the decree, that the decree passed by the High Court in 1908 still subsisted and was not affected by the Government notification although the notification had retrospective effect The notification could not abrogate rights which had been judicially declared and had been merged in decree *Kay* v. *Goodwin, 6 Bing. 576*, and *Lemm* v. *Mitchell [1912] A.C 400*, followed. LAKSHMANRAO KRISHNAJI *v.* BALKRISHNA RANGNATH (1912) **I. L. R. 36 Bom. 617**

4. ——— *Attestation of deed—Presence of witnesses at actual execution—Acknowledgment of his signature by executant—Civil Procedure Code (Act XIV of 1882), s. 149—Issue raised by Court at late stage of case—Power of Court as to issues Held* (affirming the decision of the Madras High Court), that attestation of a mortgage-deed within the meaning of s 59 of the Transfer of Property Act (IV of 1882) must be made by the witnesses signing their names after seeing the actual execution of the deed Mere acknowledgment of his signature by the executant is not sufficient. *Girindra Nath Mukerji* v *Bejoy Gopal Mukerji*, *I L R 26 Calc. 246*, *Abdul Karim*, v. *Salimun*, *I. L R. 27 Calc , 190*, *Rann* v. *Laxmanrao*, *I L R 33 Bom 44*, and *Shamu Patter* v. *Abdul Kadir Ravuthan*, *I. L. R. 31 Mad 215*, approved. *Ramji* v. *Bai Parvati*, *I. L. R 27 Bom. 91*, and *Ganga Dei* v. *Shiam Sundai*, *I L. R 26 All 69*, dissented from. Cases in England on the meaning of "attest" reviewed and discussed The first portion of s. 149 of the Civil Procedure Code (Act XIV of 1882) leaves it in the discretion of the Court to frame such additional issues as it thinks fit: whilst the latter part makes it imperative on the Judge to frame such additional issues as may be necessary to determine the controversy between the parties. The Subordinate Judge was therefore fully empowered to frame the issue on which he decided the case SHAMU PATTER *v* ABDUL KADIR RAVUTHAN (1912) **I. L. R. 35 Mad. 607**

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

——— **s. 59**—*concld*

——— **s. 83**—*Tender under s 83 in one Court subsequent to suit by mortgagee, in another Court to enforce his mortgage invalid—Where mortgagee entitled to possession, mortgagee must be put in possession before deposit under s 83—Costs, right of mortgagee to* Where after the institution of a suit by the mortgagee to enforce his mortgage in one Court, the mortgagor deposits the amount in another Court under s 83 of the Transfer of Property Act, the deposit is not a valid one and cannot have the effect of stopping the running of interest on the amount deposited. Where the mortgagor proposes to take action under s 83 of the Act, he must have a valid right to redeem under his contract with the mortgagee No deposit can be made if the mortgagee being entitled to possession is not put in possession. *Ram Soni* v *Krishnaji*, *I. L. R. 26 Bom 312*, followed. A mortgagee is entitled to his costs unless there are special reasons disentitling him to them. BAYYA SAO *v.* NARASINGA MAHAPATRO (1911) **I. L. R. 35 Mad. 209**

——— **ss. 83, 84**—*Deposit under s 83 and withdrawal by mortgagor, effect of—Interest on mortgage amount does not cease to run—Costs of mortgagee in redemption suit.* Where the mortgage amount deposited by the mortgagor under s 83 of the Transfer of Property Act has been withdrawn by the mortgagor on the mortgagee's refusal to accept it, interest in such amount does not cease to run under s. 84. The continuance of the deposit is necessary to justify the claim to the cessation of interest The mortgagee is entitled to his costs in a redemption suit. It will be forfeited by some

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

——— **ss. 83, 84**—*concld,*

improper defence or misconduct but not by merely claiming a larger amount than is due. KRISHNASAMI CHETTIAR *v.* RAMASAMI CHETTIAR (1910)
I. L. R. 35 Mad. 44

——— **s. 85**—

See DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879), SS. 47 AND 48.
I. L. R. 36 Bom. 624

See MORTGAGE . **I. L. R. 39 Calc. 527**

——— **ss. 88, 89**—*Joint decree for sale—Application for order absolute made by some of the decree-holders after the coming into force of the Civil Procedure Code, 1908—Civil Procedure Code, 1908, O. XXXIV—General Clauses Act (X of 1897), s. 6.* A decree for sale under the provisions of s. 88 of the Transfer of Property Act, 1882, was passed jointly in favour of *B* and *K*. *B* died before any order absolute for sale was passed. On 30th April 1909, the sons of *B* made an application for an order absolute for sale under s. 89 of the Transfer of Property Act. *K* was not made a party to it. *Held*, that the application would lie, inasmuch as the sons of *B* being joint decree-holders with *K* were entitled to apply for an order for sale (whether or not such order be in fact a final decree), their right to do so being inherent in the decree under s. 88 of the Transfer of Property Act. The subsequent repeal of the section could not "affect any right acquired or liability incurred" thereunder. GANGA SINGH *v.* BANWARI LAL (1911) . . . . **I. L. R. 34 All. 72**

——— **s. 90**—

1. ——— *Mortgage—Sub-mortgage—Purchaser from mortgagor—Mortgage money forming part of consideration for sale—Personal liability of purchaser—Sale of mortgagee rights.* In this case it was *held* (affirming the decisions of the Courts in India, in *Jamna Das* v. *Ram Autar Pande, I. L. R. 31 All. 352*), that the purchaser of the mortgaged property was not a person from whom the balance of the mortgage debt was "legally recoverable" within the meaning of s. 90 of the Transfer of Property Act, IV of 1882. JAMNA DAS *v.* RAM AUTAR PANDE (1911) . . . . **I. L. R. 34 All. 63**

2. ——— *Mortgage decree—Decree for costs, if a personal decree.* A decree had been passed on appeal in a mortgage suit upholding the mortgage and ordering that the Appellant who was a transferee of a portion of the mortgaged property from the mortgagor do pay costs to the respondents, the mortgagee. The mortgaged property having been sold in execution of the decree, the decree-holder applied for execution of the decree for costs against the transferee personally. *Held*, on a construction of the decree, that there was a personal liability imposed by the decree. In such cases regard should be had to what decree was passed rather than to what decree ought to have been passed. MOHANYA OJAH *v.* RAM BAHADUR SINGH (1912)
16 C. W. N. 731

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

——— **s. 90**—*contd.*

——— **s. 100**—

A document which is imperative as a mortgage by reason of its not being properly attested cannot take effect as creating a charge under s. 100, Transfer of Property Act. DEBENDRA CHANDRA ROY *v.* BEHARI LAL MUKERJEE (1912)
16 C. W. N. 1075

——— **s. 101**—

——— *Purchase—Satisfaction of mortgage on property purchased—Intention of purchaser to keep mortgage alive for his benefit—Presumption.* In considering the question whether an incumbrance should be deemed to continue to subsist on the ground that the continuance of it was for the benefit of the person who has acquired the property, the point of time to be regarded is the date of the acquisition of the property. If an intention to keep alive a charge on property is inconsistent with the real intention of the parties to the deed by which the purchaser of the property takes an assignment of it, the charge cannot be treated as still subsisting simply because the purchaser afterwards finds that it would have been better for him to have kept the charge alive. *Liquidation Estates Purchase Co.* v. *Willoughby, [1898] A. C. 321*, followed. *Bindeshuri Singh* v. *Pandit Balraj Sahai, 10 Oudh Cases 49*, and *Mohesh Lal* v. *Bawan Das, I. L. R 9 Calc 961*, referred to. JUGAL KISHORE *v.* RAM NARAIN (1912)
I. L. R. 34 All. 268

——— **s. 107**—

1. ——— *Lease exceeding one year—Registration—Unregistered lease cannot be received as evidence—Evidence Act (I of 1872) s. 91—Oral evidence of the lease cannot be given—Tenant admitting landlord's title—Amount of rent can be proved by other evidence—Parties—Admission—Estoppel—Practice.* The plaintiff owned a one-third share in certain salt-pans, which share was during her minority leased by her guardians for a period of three years at an annual rental of ₹500. The plaintiff having attained majority, she at the expiration of the period, let her share to the same lessees for a further period of two years at the rent of ₹1,000 a year. The new lease though in writing was not registered. The plaintiff sued to recover the rent for the two years at the rate of ₹1,000 a year and also ₹653 for rent due on the first lease. The defendants admitted the plaintiff's ownership and their tenancy under her, but disputed the amount of rent. *Held*, that the plaintiff could not be allowed to rely on the lease set up by her, because it was not registered (s. 107 of the Transfer of Property Act); nor could she be allowed to give oral evidence of the lease (s. 91 of the Indian Evidence Act. *Held*, further, that the defendants having admitted the ownership of the plaintiff and that they were in as her tenants, proof of the

TRANSFER OF PROPERTY ACT (IV OF 1882)—*concld.*

——— s. 107—*concld.*

relation of landlord and tenant became unnecessary. *Held*, also, that the plaintiff could only recover as for use and occupation for the two years of the tenancy admitted, at the rate claimed by her which was not excessive. RAMCHANDRA SHIVAJIRAM *v.* TAMA (1912) . **I. L. R. 36 Bom. 500**

2. ——— *Signature of lessor, necessity of, to registered instrument.* The registered instrument which, under s. 107 of the Transfer of Property Act, is necessary to create a lease within the section, need not necessarily be an instrument signed by the lessor. Such a lease may be created by a registered instrument signed by the lessee and accepted by the lessor. *Turof Sahib* v. *Esuf Sahib, I. L. R 30 Mad. 322*, overruled. *Per* THE CHIEF JUSTICE AND AYLING, *J.*—If a registered instrument signed by the lessee and accepted by the vendor is not a lease, the lessee will not be liable except on the footing of use and occupation. SYED AJAM SAHIB *v.* MADURA SREE MEENATCHI SUNDAREZWARAL DEVASTANOM (1910) **I. L. R. 35 Mad. 95**

——— s. 126—

See GIFT . . **I. L. R. 39 Calc. 933**

TRANSFER OF PROPERTY AMENDMENT ACT (III OF 1885).

——— s. 3—

See KABULIYAT **I. L. R. 39 Calc. 1016**

TRANSFEREE.

——— from execution-purchaser—

See PARTIES . **I. L. R. 39 Calc. 881**

TRANSMISSION BY POST.

See SEDITION . **I. L. R. 39 Calc. 522**

TRANSPORT.

See EXCISEABLE ARTICLES.
I. I. R. 39 Calc. 1053

TREES.

See LANDLORD AND TENANT.
I. L. R. 34 All. 545

TRESPASS.

1. ——— **Suit for damages**—*Provincial Small Cause Courts Act (IX of 1887), Art. 31, Sch. II, Jurisdiction under.* Where the plaint alleged that the defendants had trespassed upon plaintiff's land and removed his crop and assessed damages at the profit thus wrongfully obtained by defendants: *Held*, that the suit was one for damages for a single act of trespass and not exempted from the jurisdiction of the Provincial Small Cause Courts by Art. 31, Sch. II

TRESPASS—*contd.*

of the Provincial Small Cause Courts Act (IX of 1887). *Annamalai* v. *Subramanyan, I. L. R. 15 Mad. 298*, followed; and *Venkoba Rao* v. *Muthu Ayyar, 18 Mad. L. J. 88*, dissented from. RAMAIYAR *v.* SAMINATHA AYYAR (1912)
I. L. R. 35 Mad. 726

2. ——— **Trespass**—*Right of Magistrate to order search for arms—Criminal Procedure Code (Act V of 1898), ss. 36, 94, 96, 105, Sch. III (8)—Jurisdiction to issue search warrant—Arms Act (XI, of 1878), s. 25—Provision as to recording grounds for belief, in s. 25, whether mandatory or directory—Protection of Judicial Officers—Directing search where offence has been committed is judicial action—Charge of want of bonâ fides and malice reprobated.* For some time prior to 27th April 1907, much ill-feeling existed in and about Jamalpore, a sub-division of Mymensingh, between the Hindu and Mahomedan communities, and much excitement and resentment had been aroused on account of the action of the Hindus in attempting some days before that date to enforce a boycott of *bideshi* or foreign goods. On 27th April, at night, a Mahomedan was wounded by a revolver shot fired by one of a party of Hindus, dressed as Mahomedans, who after the occurrence took refuge in some cutcherries belonging to the leading zamindars of the neighbourhood who were active sympathisers with the action of the Hindus. A crowd of Mahomedans at once collected, and proceeded to the cutcherries but were prevented from attacking them by the District Superintendent of Police, and the Sub-divisional Officer, who, hearing of what had occurred, proceeded to the cutcherries, and restrained the mob, thereby averting a serious riot. A large number of Hindus, some of them with arms, had collected in a temple close by, and having bolted and barred the doors refused admittance which was demanded by the District Superintendent of Police and the Sub-divisional Officer. Shots were fired from inside the temple and a man in the crowd outside was wounded. The District Magistrate was then sent for and on his arrival on the morning of 28th April, he decided, in consultation with the District Superintendent of Police and the Sub-divisional Officer, that it was necessary to search the cutcherries to obtain possession of the arms used on the 27th, and others which it was reported to them were concealed there; and also for the purpose of, and in connexion with, the investigation of the offences committed. The cutcherries were found locked, and as no officer or servant of the zamindars could be found, they were broken open under the District Magistrate's orders and instructions, and a search was made therein by the District Superintendent of Police and the men acting under his orders. No arms of any kind were found. In a suit for trespass against the District Magistrate instituted by one of the zamindars whose cutcherry had been searched: *Held* (reversing the decision of the first Court and of the majority of the Appellate Court, and upholding the decision of BRETT, *J.*), that the search was warranted by the Code of

TRESPASS—*concld.*

Criminal Procedure (Act V of 1898) A serious offence had been committed against the public tranquillity into which it was the duty of the District Magistrate to enquire, and by virtue of his superior rank he was, at Jamalpore, the proper person to conduct the enquiry. By s. 36, Sch III, and s. 96 of the Code the power of issuing a search-warrant was among his "ordinary powers," and therefore under s. 105 he had power to direct a search to be made in his presence if he thought it advisable to do so That being so, it was unnecessary to decide on the other defences set up but, *semble* (agreeing with the majority of the Court of Appeal), that the District Magistrate not having complied with the preliminary condition prescribed by s. 25 of the Arms Act (XI of 1878) could not defend his action under that Statute. Also (agreeing with BRETT, *J*), that the District Magistrate in directing a general search of the plaintiff's cutcherry in view of an enquiry under the Criminal Procedure Code, was acting in the discharge of his judicial functions and, had it been necessary, might have appealed for protection to Act XVIII of 1850. The charge of personal misconduct advanced and reiterated without any shadow of proof, deserved the severest reprobation. CLARKE *v.* BRAJENDRA KISHORE ROY CHOWDHURY (1912) . . **I. L. R. 39 Calc. 953**

TRIBUNAL OF APPEAL.

See BOMBAY IMPROVEMENT ACT, 1898
I. L. R. 36 Bom. 203

TRUST.

See CIVIL PROCEDURE CODE, 1882, s. 539.
I. L. R. 36 Bom. 29
I. L. R. 34 All. 468

See KHOJA MAHOMEDANS
I. L. R. 36 Bom. 214

See TRUSTS ACT (II OF 1882), S 88
I. L. R. 34 All. 306

TRUSTEE.

——— *Banker and Customer—Trustee mixing trust money with his own—Indian Insolvency Act, 11 & 12 Vict, c. XXI, s 24—Voluntary payment* By a resolution, dated 31st July 1906, the Directors of the Madras Equitable Insurance Company resolved that a sum of Rs. 75,000 standing to the credit of the company with Messrs. Arbuthnot & Co., its Secretaries and Treasurers, should be invested in Government promissory notes. Messrs. Arbuthnot & Co. purchased for the Insurance Company Rs. 25,000 of Government promissory notes on 7th August 1906, Rs 25,000 on 9th October 1906, and Rs 10,000 on 20th October 1906, the securities being credited to the Insurance Company. On 22nd October 1906, Arbuthnot & Co. failed. *Held*, that Arbuthnot & Co. held the securities as trustees for the Insurance Company which was entitled to rank as a secured creditor. *Held*, also, that the fact that Arbuthnot & Co before purchasing the Government promissory notes mixed up the Insurance Company's money

TRUSTEE—*concld.*

with their own and used it in their banking business, did not amount to misappropriation of the money, the trust having a lien on the aggregate amount in the hands of the trustee and any sum which may have been drawn for the trustee's own use being deemed to have been taken out of his own money. *Held*, further, that even if Arbuthnot & Co could be held to have misappropriated the trust money, a subsequent payment in reparation by them would not amount to a "voluntary" payment within the meaning of s 24 of the Indian Insolvency Act (1848), 11 & 12 Vict., Cap XXI. RAMSAY & CO. *v.* THE OFFICIAL ASSIGNEE OF MADRAS (1912) . . **I. L. R. 35 Mad. 712**

TRUSTEES OF TEMPLE.

——— *Trustees of Temple, powers of, to suspend hereditary Archakas—Suspension otherwise justifiable not bad for want of previous notice—Archaka, a servant, subject to the disciplinary power of trustees—Power of interim suspension incidental to trustee's power to enquire and dismiss for misconduct.* The position of the hereditary Archaka of a temple is that of a servant subject to the disciplinary power of the trustee. The trustee of a temple has power to inquire into the conduct of such servants and dismiss them for misconduct The right of *interim* suspension pending such inquiry is incidental to such power and no notice is required for an *ad interim* suspension pending enquiry. Even if such notice is deemed necessary, the order of suspension will not be set aside, if misconduct is proved at the enquiry. A hereditary Archaka can be dismissed by the trustee but only for good reasons which are liable to examination by a Court of Justice. SESHADRI AIYANGAR *v.* RANGA BHATTAR (1912)
I. L. R. 35 Mad. 631

TRUSTS ACT (II OF 1882).

——— **s. 5**—*Trust declared outside British India—Proceedings in British Indian Courts—Redeemed mortgagee retaining mortgaged share as trustee for mortgagor—Notice of assignment by mortgagor—Death of mortgagor before registration of transfer to assignee—Validity of trust—Completion of gift.* *N*, through her agent *T*, mortgaged a share in the Bank of Bombay with *P* Later she directed *T* to redeem it and have it transferred by way of gift to her two nephews. It was redeemed and a transfer form was signed by *P* in favour of the nephews, but the Bank declined to register it on the ground that the transferees were minors. *N*, thereupon, directed that it should be transferred to the names of *T* and *M* jointly as trustees for the minors. A transfer was accordingly signed by *P* in favour of *T* and *M*, and this was duly registered by the Bank. The day before it was lodged with the Bank for registration, *N* died. It was contended that the gift was imperfect and the trust in favour of the nephews invalid. *Held*, that as the trust was set up in a British Indian Court the Indian Trusts Act applied, although both *N* and *P* were living and domiciled in Kathiawar

TRUSTS ACT (II OF 1882)—*concld.*

——— s. 5—*contd.*

(*i e*, outside British India) when *N* declared her wishes regarding the share *Held*, further, that *N* had an equitable interest in the share and that the mortgage having been discharged, *P*, the registered proprietor held the legal title as trustee and was bound to deal with it as *T* or his principal *N* should direct. *Held*, further, that the share had passed out of the control of *N* before her death, the certificate as well as the transfer being in the hands or under the control of *T*, to whom her desire to benefit the minors had been communicated, and that the legal holder *P*, having notice and having signed a transfer in favour of the minors before *N's* death, could only convey for their benefit, and had subsequently done so to the trustees desired by *N*. *Held*, therefore, that the trust was valid and the gift complete. MADONJI DEVCHAND *v.* TRIBHOWAN VIRCHAND (1911)
I. L. R. 36 Bom. 396

——— s. 88—*Trust—Trustee entering into dealings in which his own interest may come into conflict with his duty as trustee—Purchase of mortgage-deed comprising property belonging at the time of purchase to the trust* A member of a body of trustees purchased for a very low price at an auction sale in execution of a simple money decree held by the trustees as such a mortgage-bond comprising, amongst other property, a village of which two-thirds had been previously purchased by the author of the trust and formed part of the trust property. Neither the purchaser nor the trustees had obtained the leave of the Court to bid. The auction-purchaser claimed the purchase for himself and sought to enforce the mortgage by suit. *Held*, that the auction-purchaser Could not be allowed to do this, but must, on the contrary, be taken to have made the purchase for the benefit of the trust. All that he was entitled to was to be repaid the actual sum which he himself paid for the mortgage-deed at the auction sale. GOPI NARAIN *v.* KUNJ BEHARI LAL (1912)
I. L. R. 34 All. 306.

TURN OF WORSHIP.

See USUFRUCTUARY MORTGAGE.
I. L. R. 39 Calc 227

U

ULTRA VIRES ORDER.

See BOMBAY DISTRICT POLICE ACT, S. 42
I. L. R. 36 Bom. 504

See LIMITATION ACT, 1877, SCH. II, ART. 14 . . **I. L. R. 36 Bom. 325**

UNCHASTITY.

See HINDU LAW—INHERITANCE.
I. L. R. 36 Bom. 138

UNDER-RAIYAT.

1. ——— *Bengal Tenancy (Act VIII of 1885), s. 48—Holding of Under-raiyat.* S. 48 of the Bengal Tenancy Act applies to cases in which the land held by the raiyat is co-extensive with the land held by the under-raiyat. NIM CHAND SAHA *v* JOY CHANDRA NATH (1912)
I. L. R. 39 Calc. 839

2. ——— *Patta for a period of indefinite duration—Ejectment—Notice—Bengal Tenancy Act (VIII of 1885), s. 49, cl (b).* The case of an under-raiyat holding under a *patta* executed before the passing of the Bengal Tenancy Act, and not expressly providing for the period of its duration, comes within cl. (*b*) of s. 49 of the Bengal Tenancy Act, and the notice must be as provided thereunder *Madan Chandra Kapali* v *Jaki Kaiikar, 6 C. W. N. 377*, overruled. RAJ KUMARI DEBI *v.* BARKATULLA MANDAL (1911)
I. L. R. 39 Calc. 278

UNDISCLOSED PRINCIPAL.

See PRINCIPAL AND AGENT.
I. L. R. 39 Calc. 802

UNDIVIDED FAMILY.

See HINDU LAW—ALIENATION.
I L. R. 35 Mad. 177

UNDIVIDED INTEREST.

——— purchase of—

See SALE FOR ARREARS OF REVENUE
I. L. R. 39 Calc. 353

UNITED PROVINCES LAND REVENUE ACT (III OF 1901).

——— ss. 56, 233 (*i*)—

See JURISDICTION . **I. L. R. 34 All. 358**

UNITED PROVINCES MUNICIPALITIES ACT (I OF 1900).

——— s. 187—

See LOCAL GENERAL CLAUSES ACT (I OF 1904), S. 23 . **I. L. R. 34 All. 391**

USER.

See USING AS GENUINE A FORGED DOCUMENT . . **I. L. R. 39 Calc. 463**

USING AS GENUINE A FORGED DOCUMENT.

——— *Handing over of a forged rent-receipt by accused, in the course of a criminal trial, to his mukhtear—Examination by the mukhtear of a witness thereon—Receipt filed by the Magistrate with the record though not proved—Grant of sanction to landlord's agent not a party to the criminal case—Sanction by successor of Magistrate before whom the forged document was used—Penal Code (Act XLV of 1860), s. 471—Criminal Procedure Code (Act V of 1898), s. 195.* Where the accused,

USING AS GENUINE A FORGED DOCUMENT—*concld.*

during the course of a criminal trial against him of rioting and theft of crops, handed over to his mukhtear a forged rent-receipt, bearing a counterfeit seal of the landlord, to prove his possession, and the latter put the same to a witness and questioned to him as to its genuineness, but, on the witness alleging that it was a forgery, the trying Magistrate took it, initialled it and placed it on the record: *Held*, that there was a user of the document within s. 471 of the Penal Code. *Ambica Prasad Singh* v. *Emperor*, *I. L R 35 Calc. 820*, distinguished A sanction granted to the agent of the landlord whose seal was forged is valid, though neither was a party to the criminal case in which the forged document was used. A sanction granted by the successor of a Magistrate before whom the forged document was used is good in law. RATI JHA *v* EMPEROR (1911) . . . . **I. L. R. 39 Calc. 463**

USUFRUCTUARY MORTGAGE.

———— *Turn of worship in a temple—Transfer of Property Act (IV of 1882), s 59—Mortgage-bond creating right to worship, whether requires attestation.* A turn of worship is not an interest in immoveable property. Therefore, an usufructuary mortgage-bond creating an interest in a turn of worship does not require attestion by witnesses under s 59 of the Transfer of Property Act. *Eshan Chunder Roy* v. *Monmohini Dassi*, *I L. R. 4 Calc 683*, referred to JATI KAR *v.* MUKUNDA DEB (1911) . **I. L. R. 39 Calc. 227**

V

VAKALATANAMA.

———— *Civil Procedure Code (Act V of 1908), O XXIII r. 1—Withdrawal, application for—Pleader's authority—Vakalatnama—Plaintiff if may object to order as made on insufficient grounds* A vakalatnama executed by the plaintiffs which authorised their pleader "to choose arbitrators, prefer objections to awards, file solenamah or rafanamah when necessary and do all necessary acts in connection with the suit that will be for our benefit" gave the pleader authority to make an application under O XXIII, r 1 for the withdrawal of the suit *Quære* Whether it is open to the plaintiff to take exception to an order permitting him to withdraw a suit with liberty to bring a fresh suit on the ground that the grounds set out in the application for withdrawal were insufficient KAILASH CHANDRA KAR *v* HARADHAN CHATTERJEA (1912) . . **16 C. W. N 932**

VALUATION OF PROPERTY.

———— **basis of—**

See MUNICIPAL ASSESSMENT
I. L. R. 39 Calc. 141

VATAN

See DEKKHAN AGRICULTURISTS' RELIEF ACT, S. 2, EXPL. (*b*)
I. L. R. 36 Bom. 151

See SANAD, CONSTRUCTION OF
I. L. R. 36 Bom. 639

VATANDARS.

See HEREDITARY OFFICES ACT, BOMBAY, S. 67 . . **I. L. R 36 Bom. 420**

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See MUNICIPAL ELECTION
I. L. R. 39 Calc. 598, 754

VYAVAHARA MAYUKHA.

See HINDU LAW—SUCCESSION
I. L. R. 36 Bom. 120

W

WAGING WAR.

———— **conspiracy to—**

See PENAL CODE, SS. 121A, 123.
16 C. W. N. 1105

WAJIB-UL-ARZ.

See CIVIL PROCEDURE CODE, 1882, SS. 584, 585 . **I. L. R. 34 All. 579**

See LETTERS PATENT, L. 10 .
I L R. 34 All. 13

See PRE-EMPTION
I L. R. 34 All. 434, 542

See PRE-EMPTION—CUSTOM—RIGHT OF PRE-EMPTION

WAKF.

See KHOJA MAHOMEDANS
I. L. R. 36 Bom. 214

See MAHOMEDAN LAW—ENDOWMENT

See LIMITATION ACT, 1877, SCH II, ART. 123. . **I. L. R. 33 Bom. 111**

WARRANT.

See HABEAS CORPUS.
I. L. R. 39 a lc. 164

———— **with alterations—**

See MAGISTRATE, JURISDICTION OF
I. L. R. 39 Calc. 403

———— *Arrest on a warrant allowing bail without intimating that bail has been allowed, legality of—Lawful custody—Rescue from custody.* On a warrant which provided for bail a constable arrested one *S* without giving him intimation that bail had been allowed; *S* was then rescued by a number of persons, who assaulted the constable *Held*, that the arrest of *S* was illegal, as before actually making the arrest the constable should certainly have said, "Can you give the

WARRANT—*concld*

required bail ? '' That as *S* was not in lawful custody, his rescue did not constitute any offence and the persons who rescued *S* had the right of private defence and as they, under the circumstances of the case, had not exceeded that right, they could not be held guilty of any offence. SHYAMA CHURN MAJUMDAR *v* THE KING-EMPEROR (1911) . . . . **16 C. W. N. 549**

WATER-PASSAGE

See DISPUTE CONCERNING EASEMENT.
I. L. R. 39 Calc. 550

WIDOW.

See FRAUD . **I. L. R 36 Bom. 185**

See HINDU LAW—INHERITANCE
I. L. R. 36 Bom. 138

See HINDU LAW—LEGAL NECESSITY
I. L. R. 36 Bom. 88

See HINDU LAW—MAINTENANCE
I. L. R. 36 Bom. 131, 383

See RES JUDICATA.
I. L. R. 36 Bom. 127

——— representative of—

See MORTGAGE . **I. L. R. 39 Calc. 925**

WIDOW AND REVERSIONER.

See HINDU LAW—WIDOW
I. L R. 35 Mad. 560

WIFE.

See HINDU LAW—INHERITANCE.
I. L. R 36 Bom. 138

WILL.

See HINDU LAW—WILL
I L. R. 36 Bom. 29

See HINDU LAW—WILI.
I. L. R. 34 All. 405

See PROBATE . **I. L. R 39 Calc. 245**

——— construction of—

See MAHOMEDAN LAW—ALIENATION
I. L. R. 34 All. 213

1. ——— Minor—*Capacity to make will—Indian Majority Act (IX of 1675), s. 3—Hindu Law.* A Hindu minor, who has not attained majority as provided in the Indian Majority Act, 1875, is not competent to make a will of his or her property. BAI GULAB *v.* THAKORELAL (1912)
I. L. R. 36 Bom. 622

2. ——— Proof—*Will, challenged as forgery—Suspicion alone when ground for refusing probate—Presumption against misconduct, operation of—Evidence Act (I of 1872), ss. 3, 45, 101, 135—Order in which witness to be tendered, discretion of Counsel and Court's power—Expert, medical examination of, to test value of evidence of attending physician—Expert in Bengali language and legal*

WILL—*concld*

terms, examination of—Document put to witness right of opposing counsel to inspect If a party writes or prepares a will under which he takes a benefit, that circumstance in itself ought generally to excite suspicion of the Court and calls upon it to be vigilant in examining the evidence in support of the instrument in favour of which it ought not to pronounce unless the suspicion is removed and it is judicially satisfied that the paper propounded does express the true will of the deceased. *Barry* v. *Butlin, 2 Moo P. C. 480,* referred to, and the rule in *Tyrrell* v *Painton, [1894] P D 151,* explained *Per* JENKINS, *C J.* The suspicion which by itself would be ground for the Court not pronouncing in favour of an alleged will, must be one inherent in the nature of the transaction itself and not the doubt that may arise from a conflict of testimony which becomes apparent on an investigation of the transaction *Per* WOODROFFE, *J* The rule in *Tyrell* v *Painton, [1894] P. D. 151,* applies to cases where the circumstances of suspicion arise from the nature of the case as put forward by the propounder in which case the propounder must remove the suspicion. Where, however, the alleged suspicion against a will arises from facts which form part of the impugnant's case, then the Court must see whether the facts which are said to give rise to suspicion are proved or whether the propounder's case is proved The rule, therefore, does not apply where the question is simply which set of witnesses should be believed In this case the trial Judge having decided against the genuineness of the will on the ground that the evidence of the witnesses whom the propounder had called to support her case was not so unimpeachable, so absolutely trustworthly in itself as by its own merit to dispose of all objections and to allay all doubt and suspicion : *Held per* JENKINS, *C.J.*, that the standard of proof required by the Judge was higher than the law (as contained in s 3 of the Indian Evidence Act) prescribes. *Per* WOODROFFE, *J* —A probate case is not singular as regards the application of the general principles of proof as contained in ss. 3 and 101 of the Indian Evidence Act *Per* JENKINS, *C.J.*—The Evidence Act, by which in matters of proof the Courts in this country must be guided, has in conformity with the general tendency of the day, adopted the requirements of the prudent man as an appropriate concrete standard by which to measure proof The Evidence Act is at the same time expressed in terms which allow full effect to be given to circumstances or conditions of probability or improbability, so that where, as in this case, forgery comes in question in a civil suit, the presumption against misconduct is not without its due weight as a circumstance of improbability, though the standard of proof to the exclusion of all reasonable doubt required in a criminal case may not be applicable. *Cooper* v *Slade, 6 H L. Cas 746,* and *Doe d Devine* v. *Wilson, 10 Moo P. C 502, 531* referred to. This probability gains in strength where the character and position of the individual impugned is, apart from the particular case, above reproach. *In the goods of* GOPESSUR DUTT *v* BISSESSUR DUTT (1911) . . **16 C. W. N. 265**

WINDING UP.

See COMPANIES' ACT, ss 28, 45, 61
I. L. R. 36 Bom. 557

WITHDRAWAL OF RIGHTS

See ACT OF STATE.
I. L. R. 39 Calc. 615

WITNESS.

——— examination of—

See CRIMINAL PROCEDURE CODE, 1898, s. 263 . . I. L. R. 39 Calc. 931

——— A servant of the Municipality was summoned at the plaintiff's instance to produce certain documents which the plaintiff maintained would support his case of adverse possession of the land in dispute but he failed or declined to attend, and the plaintiff's application for a warrant to compel his attendance was rejected without good reason. The suit was dismissed on the ground, amongst others, that plaintiff was not in possession for 12 years. *Held*, on second appeal, that there should be a re-hearing after compelling the witness to attend and produce the documents UPENDRA NATH GHOSE *v.* THE CHAIRMAN OF THE CALCUTTA CORPORATION (1911) 16 C. W. N. 116

WORDS AND PHRASES.

——— "accused person"—

See CRIMINAL PROCEDURE CODE, ss 145, 526 . . I. L. R. 34 All 533

——— "any one individual person"—

See MUNICIPAL ELECTION.
I. L. R. 39 Calc. 754

——— "conclusive proof"—

See AGRA TENANCY ACT (II OF 1901), s 9
I. L. R 34 All. 285

——— "criminal case"—

See CRIMINAL PROCEDURE CODE, ss 145, 526 . . I. L. R. 34 All 533

——— "dayada"—

See HINDU LAW
I. L. R. 36 Bom 424

——— "fixed or guaranteed"—

See SURVEY AND SETTLEMENT ACT.
I. L. R. 36 Bom 290

——— "gambling" and "wagering"—

See COTTON-GAMBLING
I. L. R. 39 Calc. 968

——— "holder"—

See LAND REVENUE CODE, BOMBAY.
I. L. R. 36 Bom. 315

WORDS AND PHRASES—*concld*

——— "injury to the person"—

See PROVINCIAL SMALL CAUSES COURTS ACT . I. L. R. 36 Bom. 443

——— "judicial proceeding"—

See CRIMINAL PROCEDURE CODE, ss. 195, 476 . I. L. R. 34 All. 602

——— "Majur"—

See INSURANCE . I. L. R. 36 Bom. 484

——— "muakhiza"—

See MORTGAGE . I. L. R. 34 All. 446

——— "oversight"—

See LAND REVENUE CODE, BOMBAY
I. L. R 36 Bom. 315

——— "protected interest"—

See LANDLORD AND TENANT.
I. L. R. 39 Calc. 138

——— "public charitable or religious purposes"—

See CIVIL PROCEDURE CODE, 1882, s. 539.
I. L. R. 34 All. 468

——— "re-erection"—

See BUILDING . I. L. R. 39 Calc. 84

——— "religious assembly"—

See PENAL CODE (ACT XLV OF 1860), s 296 . . . I. L. R. 34 All. 78

——— "rikhta"—

See HINDU LAW—STRIDHAN
I L. R. 36 Bom. 424

——— "sanctioned"—

See SURVEY AND SETTLEMENT ACT.
I. L. R. 36 Bom. 290

——— "shawls"—

See RAILWAYS ACT, 1890, s 75, Sch. II (*m*) . I. L. R. 39 Calc. 1029

——— "succeeded by another Magistrate"—

See RIOTING . I. L. R. 39 Calc. 781

——— "witnesses for the defence"—

See JURISDICTION OF MAGISTRATE.
I. L. R. 39 Calc. 885

WORK CALCULATED TO DEPRAVE MORALS.

See OBSCENE PUBLICATION.
I. L. R. 39 Calc. 377

WORSHIP.

_____ turn of—

See USUFRUCTUARY MORTGAGE.
I. L. R. 39 Calc. 227

Y

YAJMAN VRITTI.

See HINDU LAW—HEREDITARY PRIEST.
I. L. R. 36 Bom. 94

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ZAMINDARY RIGHTS.

See KUNJPURA, STATE OF.
I. L. R. 39 Calc. 711

ZURIPESHGI LEASE.

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